



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

**Cosponsored by the California Association
Of Sanitation Agencies**

November 7 - 9, 2007
Westin Mission Hills
Palm Springs, CA

Wednesday, November 7

Morning

7:00 – 4:30

Registration

7:15 - 8:45

Continental Breakfast

The Clean Water Act: A Conference Primer

For new practitioners & those who would like a refresher, this early session will provide an overview of those Clean Water Act statutory provisions and regulations which are relevant to the key topics and issues that will be discussed during *Seminar* presentations.

Featured Speaker

Erika Powers*

Partner

Barnes & Thornburg

Chicago, IL

9:00 - 12:00

GENERAL SESSION I

Opening Remarks

Christopher M. Westhoff*

NACWA President

Assistant City Attorney,

Public Works General Counsel

City of Los Angeles, CA

*=Confirmed Speaker

2007 Seminar Overview

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

Panel Discussion

Can it Hold Water? Making a Watershed Approach Legal

The watershed approach to monitoring, management, reporting, and enforcement continues to gain ground. This opening panel will review the status of the watershed approach from a number of key perspectives, and discuss how it can be made legal and workable for all parties.

Moderator/Speaker:

Charles Logue*
Director, Regulatory Affairs Department
Clean Water Services
Hillsboro, OR

Speakers:

Amanda Waters*
Legal Counsel
Sanitation District No. 1
Ft. Wright, KY

Ashli Desai*
Vice President
Larry Walker Associates
Santa Monica, CA

Beth Card*
Co-Chair, ASIWPCA Legal Affairs Committee
New England Interstate Water Pollution Control Commission
Lowell, MA

Tom Lavery*
Branch Chief, State and Regional Branch, Water Permits Division
Office of Wastewater Management,
U.S. Environmental Protection Agency
Washington, DC

10:30 - 10:45

Break

10:45 – 12:00

Roundtable

Satellite Collection Systems: Bringing Them into Your Orbit

***=Confirmed Speaker**

This roundtable will transition from the earlier discussion of watershed approaches to address the legal component of bringing satellite systems to the table to achieve sewer system and watershed goals. Attendees will hear first hand from lawyers and managers who have been able to ensure that they are indeed in the same orbit as independent satellite collection systems.

Moderator/Speaker:

Christopher M. Westhoff*
NACWA President

Speakers:

Terry Satterlee*
Outside General Counsel
Little Blue Valley Sewer District
Independence, MO

Michele Pla*
Executive Director
Bay Area Clean Water Agencies
Oakland, CA

Afternoon

12:15- 1:45

Luncheon

Welcoming Remarks

Ken Kirk*
NACWA Executive Director
Washington, DC

Speaker Introduction

Christopher M. Westhoff
NACWA President

Keynote Address – Achieving Our Water Quality Goals: How Clean Water Agencies, NGOs, and Regulators Can Work Together on a Watershed Approach

Tracy Egoscue*
Executive Officer
Los Angeles Regional Water Quality Control Board
Los Angeles, CA

As a clean water attorney, environmentalist, and regulator, Tracey Egoscue has dealt with watershed issues from a variety of perspectives. Tracey was recently appointed Executive Officer of the Los Angeles Regional Water Quality Control Board, and is a former Executive Director of the Santa Monica Baykeeper. Her *Keynote* will address how clean water agencies, environmental groups, and regulators can work together to achieve a comprehensive watershed approach to improving water quality. Tracy has worked for both environmental groups and as a Deputy Attorney General in the Natural Resources Section of the California Department of Justice, and has a track record of working with non-

*=Confirmed Speaker

governmental organizations, clean water utilities, and regulators to improve water quality. She brings a diverse set of experiences to the table, and promises to both challenge and inform *Seminar* attendees about how different parties can work together to achieve watershed goals.

2:00 - 5:00

GENERAL SESSION II

Opening Remarks

Keith J. Jones*

NACWA General Counsel

Washington, DC

Panel Discussion

Is it Hot in Here? How Clean Water Utilities are Finding Opportunity and Challenge in the Climate Change Arena

This session will take a practical approach to the climate change issue, including an examination of how climate change can have a legal impact on clean water agencies. Speakers will address how climate concerns can affect a clean water agency's selection and evaluation of technology, as well as present legal opportunities and challenges. Topics to be discussed include how energy consumption can impact choices, as well as the legal ramifications of building climate change assumptions into capital plans.

Moderator/Speaker:

Hilary Meltzer*

Senior Counsel

New York City Law Department

New York, NY

Speakers:

David M. Williamson*

Partner

Beveridge & Diamond

Washington, DC

Jylana Collins*

General Counsel

East Bay Municipal Utility District

Oakland, CA

3:15 - 3:30

Break

3:30 - 5:00

Panel Discussion

The State of Stormwater

This panel will examine the current state of stormwater regulation and litigation, including the increasing emergence of legal challenges to municipal separate storm sewer system (MS4) permits that require compliance with state water quality standards. Panelists will also discuss the role of stormwater in a

***=Confirmed Speaker**

comprehensive watershed approach, including the growing responsibility for stormwater management by clean water agencies.

Moderator:

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

Speakers:

Theresa A. Dunham*
Of Counsel
Somach Simmons & Dunn
Sacramento, CA

David W. Burchmore*
Partner
Squire Sanders & Dempsey
Cleveland, OH

Dan McLawhorn*
Associate City Attorney
Raleigh, NC

LaJuana S. Wilcher*
English, Lucas, Priest & Owsley
Bowling Green, KY

Closing Remarks/Announcements
Lisa Hollander

6:00 – 7:00

Welcoming Reception

Thursday, November 8

Morning

8:30 - 4:30

Registration

8:30 - 9:30

Continental Breakfast

9:00 - 12:00

GENERAL SESSION III

Opening Remarks

Roberta Larson*
Vice Chair, NACWA Legal Affairs Committee
Director of Legal and Regulatory Affairs
California Association of Sanitation Agencies
Somach Simmons & Dunn

*=Confirmed Speaker
Sacramento, CA

Panel Discussion: How Capable are You? The Role of Financial Capability and Affordability in Selecting Infrastructure Solutions

This panel will look at the critical issue of financial capability and affordability for clean water agencies. Arguments necessary for a clean water attorney to “make your case” regarding affordability will be covered, and a variety of perspectives explored. This session will be especially relevant to counsel and managers of combined and separate sewer systems – as the concept of affordability is at the core of future decisions for both types of systems.

Moderator/Speaker:

Lisa Hollander*
Chair, NACWA Legal Affairs Committee

Speakers:

Eric Rothstein*
Galardi Rothstein Group
Chicago, IL

John Stevens*
Partner
Foley Hoag
Boston, MA

10:30 – 10:45

Break

10:45 – 12:00

Breakout Sessions:

Breakout Session 1 -- Construction Law: Don't Promise What You Can't Deliver

Many clean water agencies are engaged in significant construction projects lasting many years and costing hundreds of millions of dollars, oftentimes as the result of an enforcement action from federal or state regulators. Yet the rising cost of construction materials is forcing many agencies to alter their construction plans, causing a delay in completion of projects or resulting in design changes that may not meet the original legal promises made to regulatory authorities. This panel will explore ways for wastewater utilities to better plan for and carry out major construction projects, including ways to protect utilities from making construction promises they can't deliver.

Moderator/Speaker:

Avis Marie Russell*
General Counsel
District of Columbia Water and Sewer Authority
Washington, DC

*=Confirmed Speaker

Speakers:

Richard Mah*
Principal
Hunt Ortmann
Pasadena, CA

George Barnes*
Deputy Commissioner, Bureau of Engineering Services
City of Atlanta Department of Watershed Management
Atlanta, GA

Jim Joyce*
President & CEO
H.R. Gray
Columbus, OH

Breakout Session 2 -- Eminent Domain: The Practical Realities for Clean Water Agencies

Although never popular, eminent domain is an important tool for clean water agencies to consider, especially when engaging in large-scale construction or maintenance projects. This panel will discuss the factors a clean water agency attorney should consider when contemplating the use of eminent domain, including when its use is most appropriate, what steps must be taken, the role of Board members in the process, and how best to deal with any legal challenges to the project.

Moderator/Speaker:

Allen Garner*
City Counselor
City of Independence, MO

Speakers:

Wesley G. Beverlin*
Partner
Lewis Brisbois Bisgard & Smith LLP
Los Angeles, CA

Christina Pezzulo*
Deputy County Attorney
Onondaga County Department of Water Environment Protection
Syracuse, NY

12:00 – 2:00

Lunch on Your Own

*=Confirmed Speaker

Afternoon

2:00 – 5:00

GENERAL SESSION IV

Opening Remarks

Chris Westhoff
NACWA President

Panel Discussion

Redefining Clean Water Act Jurisdiction

A series of recent court cases, including the *Rapanos/Carabell* and *Healdsburg* decisions, have affected the jurisdictional boundaries of the Clean Water Act. Congress has also stepped into the debate with the introduction of the Clean Water Restoration Act, which seeks to redefine the definition of “water of the U.S.” in the CWA. Participants on this roundtable will discuss these jurisdictional shifts, including their potential legal ramifications, and how they may affect the clean water community.

Moderator:

Roberta Larson*
Vice Chair, NACWA Legal Affairs Committee

Speakers:

Lee A. DeHihns*
Partner
Alston & Bird
Atlanta, GA

Peter McGaw*
Partner
Archer Norris
Walnut Creek, CA

3:15 – 3:30

Break

3:30 - 5:00

Panel Discussion

“Never Mind...”: When Rules Change

One constant for clean water utilities is the always evolving and changing regulatory climate. While at times regulatory changes can provide needed clarity, at other times they can create confusion and legal uncertainty. This panel will review the experience of several agencies seeking to operate and succeed in a changing regulatory and legal environment, and provide advice to clean water attorneys on how to deal with a shifting regulatory landscape.

Moderator/Speaker:

Dave Williams*
Director of Wastewater
East Bay Municipal Utility District
Oakland, CA

*=Confirmed Speaker

Speakers:

Fredric P. Andes*
Partner
Barnes & Thornburg
Chicago, IL

Bob Weaver*
Kelly & Weaver
Washington, DC

William A. Anderson*
Partner
Williams Mullen
Washington, DC

Closing Remarks/Announcements
Lisa Hollander

Friday, November 9

Morning

8:30 - 10:00

Registration

8:30 – 9:30

Continental Breakfast

9:00 - 12:00

GENERAL SESSION V

Opening Remarks

Chris Westhoff
NACWA President

Roundtable

Wet Weather Enforcement Issues: Exploring Recent Enforcements Initiatives, Future Implications, and How to Live With a Consent Decree

This panel will profile recent combined sewer overflow (CSO) and sanitary sewer overflow (SSO) enforcement actions, and will also discuss how to successfully live with a wet weather consent decree. Panelist will provide examples of cities that have learned how to effectively meet and live with requirements of existing consent decrees, and will also address the implications that current enforcement trends will have, both for the clean water agencies directly involved but also for those agencies that are not yet targets. Panelists will also provide advice to clean water attorneys on how agencies can deal with potential wet weather enforcement actions.

Moderator/Speaker:

Sally Mills*
Deputy Commissioner, Bureau of Watershed Protection
City of Atlanta Department of Watershed Management

*=Confirmed Speaker

Atlanta, GA

Speakers:

F. Paul Calamita*

Member

AquaLaw

Richmond, VA

Nadira Clarke*

Beveridge & Diamond PC

Washington, DC

10:15 – 10:30

Break

10:30 – 12:00

Panel Discussion

Settling for More: Managing an Enforcement Action to Your Agency's Benefit

Many clean water attorneys are finding that it makes more sense for them to settle an enforcement action than take the case to litigation. This panel will explore some of the reasons settlement can benefit a clean water agency. The role of supplemental environmental projects (SEPs) will be considered, as well as the role of citizen groups can play in such litigation.

Moderator/Speaker:

James J. Dragna*

Partner

Bingham McCutchen

Los Angeles, CA

Speakers:

Linda E. Benfield*

Partner

Foley & Lardner LLP

Milwaukee, WI

Nicole E. Granquist*

Partner

Downey Brand LLP

Sacramento, CA

Closing Remarks/Adjourn

Lisa Hollander