



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

In association with the Oregon Association of Clean Water Agencies

**November 14 - 16, 2012**  
**Westin Seattle**  
**Seattle, WA**

All meetings will take place on the Westlake Level of the Westin Seattle unless otherwise noted.

*Updated as of 11/7/12*

**Wednesday, November 14**

*Morning*

**7:30 – 4:30**      **Registration**

*Westlake Foyer*

**7:45 - 9:30**      **Continental Breakfast is served**

*Westlake Foyer*

**8:00 – 9:15**      **Clean Water Act Primer**

*Pike*

Start the *Seminar* off right with the NACWA Clean Water Act Primer, which provide a valuable overview of the environmental law most relevant to clean water practitioners. Designed both for newcomers to the clean water world as well as seasoned veterans, this preliminary session will cover Clean Water Act statutory provisions and regulations related to the key topics and issues that will be discussed during *Seminar* presentations.

**Erika Powers**

Partner

Barnes & Thornburg LLP

Chicago, IL

**9:30 - 12:15**      **GENERAL SESSION I**

*Pike*

**Opening Remarks**

**Suzanne Goss**

*NACWA President*

Government Relations Specialist

JEA (Electric, Water & Sewer)

Jacksonville, FL

## Welcoming Remarks

**Nancy Ahern**

Deputy Director  
Seattle Public Utilities  
Seattle, WA

## 2012 Seminar Overview

**Lisa Hollander**

*Chair, NACWA Legal Affairs Committee*  
General Counsel  
Sanitation District No. 1  
Ft. Wright, KY

## *Keynote Address*

### Clean Water Legal Issues – An EPA Perspective

**Ken Kopocis**

Policy Advisor, Office of Water  
U.S. Environmental Protection Agency  
Washington, DC

10:15 - 10:30 Break

## Integrated Planning's Big Adventure

### What Is It, How to Use It, and Its Clean Water Legal Implications

The recent release of EPA's final integrated planning framework provides a new and valuable tool to clean water utilities in meeting their legal obligation under the Clean Water Act, especially wet weather issues. However, there is still confusion about what the framework is, how best to use it, and its implications for municipal wastewater and stormwater agencies. Speakers on this panel, including EPA officials and clean water legal experts, will highlight the key elements of the framework, explain how it can be used in both an enforcement and permitting context, and outline the most important factors clean water utilities and their attorneys should consider when pursuing an integrated planning approach.

**Deborah Nagle**

Director, Water Permits Division  
Office of Water  
U.S. Environmental Protection Agency  
Washington, DC

**Mark Pollins**

Director, Water Enforcement Division  
Office of Enforcement & Compliance Assurance  
U.S. Environmental Protection Agency  
Washington, DC

**Fred Andes**

Partner

Barnes & Thornburg LLP

Chicago, IL

**Neil Mullane**

Administrator, Water Quality Division (Retired)

Oregon Department of Environmental Quality

Portland, OR

*Afternoon*

12:15- 2:00

*Pine*

Luncheon

**Opening Remarks and Speaker Introduction**

**Nathan Gardner-Andrews**

General Counsel

National Association of Clean Water Agencies

Washington, DC

*Luncheon Address*

**Clean Water Success Stories – How to Build Community-Utility Partnerships Through Green Infrastructure**

**Cari Simson**

Principal Consultant

Urban System Design

Seattle, WA

2:00 - 5:00

*Pike*

**GENERAL SESSION II**

**Opening Remarks**

**Hilary Meltzer**

*Vice Chair, NACWA Legal Affairs Committee*

Deputy Chief, Environmental Law Division

New York City Law Department

New York, NY

**A More Flexible Approach?**

**Recent Developments in Clean Water Enforcement Actions**

A series of events over the past year involving clean water enforcement actions suggests some new flexibility from EPA and some states regarding municipal wet weather consent decrees. These developments include a new consent decree with Seattle containing innovative language on integrated planning and CMOM issues, a consent decree extension of 13 years negotiated by Atlanta, and a new willingness on the part of some states to amend existing wet weather enforcement agreements. Speakers on this panel will provide an overview of these important legal agreements and, building on the morning's discussion of integrated planning, discuss how other clean water utilities can leverage these legal developments to pursue additional enforcement flexibility.

**Trish Rhay**

Director, Drainage and Wastewater Division  
Seattle Public Utilities  
Seattle, WA

**Susan Richardson**

Partner  
Kilpatrick, Townsend & Stockton, LLP  
Atlanta, GA

**Jan Millington**

Assistant City Attorney  
City of Springfield Law Department  
Springfield, MO

3:15 - 3:30 Break

**Consent Decrees 101:**

**What Every Clean Water Utility Should Know**

Negotiating and implementing a wet weather consent decree is one of the most difficult and challenging tasks for any clean water agency, especially for utility managers and legal counsel. The regulatory and legal landscape involving decrees is especially complicated now, given ongoing economic challenges and the uncertainty surrounding EPA's integrated planning approach. Speakers on this panel will round out the day's previous discussions and help clarify the current legal landscape by covering three critical components of the consent decree process: responding to CWA Section 308 letters and EPA requests for information; recognizing and using leverage to a utility's advantage during decree negotiations, including consent decree modifications; and effectively implementing a decree, including setting up reporting systems and working with regulators during implementation.

**John Sheehan**

Member  
Clark Hill PLC  
Washington, DC

**Paul Calamita**

Chairman  
AquaLaw PLC  
Richmond, VA

**Jan Betz**

Deputy City Attorney  
City of Portland Bureau of Environmental Services  
Portland, OR

## Closing Remarks/Announcements

**Lisa Hollander**

*Chair, NACWA Legal Affairs Committee*

6:00 – 7:00

*Fifth Avenue  
Grand Level*

## Welcoming Reception

Generously sponsored by AquaLaw PLC in honor of their 10<sup>th</sup> Anniversary

## Thursday, November 15

*Morning*

8:30 - 4:30

Registration

*Westlake Foyer*

8:30 - 9:30

Continental Breakfast is served

*Westlake Foyer*

9:00 - 12:00

*Pike*

## GENERAL SESSION III

### Opening Remarks

**Lisa Hollander**

*Chair, NACWA Legal Affairs Committee*

### Nutrients:

#### The Next Clean Water Legal Frontier

There is perhaps no more challenging legal and regulatory issue facing clean water agencies today than how to deal with the growing problem of nutrient impairment. Not only are more and more utility permits including nutrient limits, but there are also ongoing federal lawsuits involving nutrients in major watersheds throughout the country, including the Mississippi River Basin and the Chesapeake Bay. This panel will explore a variety of legal considerations and strategies utilities should consider when responding to the nutrient challenge, including an overview of key national nutrient litigation, a discussion of the relationship between state and federal roles over nutrient criteria, and a look at the potential opportunities for addressing nutrients through water quality trading.

**Karen Hansen**

Principal

Beveridge & Diamond, P.C.

Austin, TX

**Brooks Smith**

Partner

Hunton & Williams, LLP

Richmond, VA

**Dan McLawhorn**  
Associate City Attorney  
City of Raleigh  
Raleigh, NC

10:15 – 10:30 Break

### **Storm Clouds Gathering:**

#### **The Increase in Municipal Stormwater Litigation & Enforcement**

The past few years have seen a growing number of lawsuits involving municipal stormwater issues. Combine this with the increase in federal and state enforcement actions, along with new federal regulations on the horizon, and stormwater promises to be a high-profile area of clean water law well into the future. Discussion on this panel will focus on a number of hot-button stormwater issues particular: municipal lawsuits challenging “flow based” total maximum daily loads (TMDLs), litigation involving municipal stormwater fee programs, the increase in stormwater enforcement actions, and how to survive a stormwater program audit.

**Dick Sedgley**  
Attorney  
AquaLaw PLC  
Richmond, VA

**Lawrence Liebesman**  
Partner  
Holland & Knight, LLP  
Washington, DC

**Jill Piatt Kemper**  
Senior Environmental Engineer  
City of Aurora Water Department  
Aurora, CO

**David Burchmore**  
Partner  
Squire, Sanders  
Cleveland, OH

### *Afternoon*

12:00 – 2:00 Lunch on Your Own

### 2:00 – 5:00 **GENERAL SESSION IV**

*Pike* Opening Remarks

**Nathan Gardner-Andrews**  
General Counsel  
NACWA

### *Roundtable Discussion*

#### **Top CWA Legal Cases of the Year**

Courts around the nation are constantly interpreting the Clean Water Act and issuing legal decisions that affect clean water utilities – often in ways that may not seem related to issues in the original cases. Always one of the most popular *Seminar* presentations, this roundtable of top clean water attorneys will review the most important Clean Water Act cases of the past year and provide critical insights for both clean water attorneys and managers on how these cases could affect your utility.

#### **Hilary Meltzer**

*Vice Chair, NACWA Legal Affairs Committee*

#### **Allan Gates**

Partner

Mitchell, Williams, Selig, Gates & Woodyard, PLLC  
Little Rock, AR

#### **Lee DeHihns**

Partner

Alston & Bird LLP  
Atlanta, GA

3:15 – 3:30      Break

#### **Can't We All Get Along?**

#### **CWA Interaction With Other Federal Environmental Laws**

Clean water utilities increasingly are finding themselves faced not only with CWA compliance, but also a host of other environmental statutes including the Endangered Species Act (ESA), the Comprehensive Environmental Response, Compensation, and Liabilities Act (CERCLA – also known as “Superfund”), the Resource Conservation and Recovery Act (RCRA), and the Clean Air Act (CAA). Understanding how these other federal laws interact with the CWA, and how to meet their sometimes conflicting compliance requirements, can be confusing and challenging. Experts on this panel will explain where some of these conflicts can exist and how clean water agencies can best seek a harmonious approach to meeting the various statutes.

#### **Susan Amron**

Chief, Environmental Law Division  
New York City Law Department  
New York, NY

**Jay Waldron**  
Attorney  
Schwabe, Williamson & Wyatt  
Portland, OR

**David Friedland**  
Principal  
Beveridge & Diamond, P.C.  
Washington, DC

### Closing Remarks/Announcements

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

6:00 – 7:00      **Reception**  
*Puget Sound*  
*Lobby Level*

### Friday, November 16

*Morning*

7:30 - 10:00      **Registration**  
*Westlake Foyer*

7:30 – 8:30      **Continental Breakfast is served**  
*Westlake Foyer*

8:00 - 11:00      **GENERAL SESSION V**  
*Pike*      **Opening Remarks**  
                 **Lisa Hollander**  
                 *Chair, NACWA Legal Affairs Committee*

### **Ethics:**

#### **Going Beyond the Model Rules**

Now more than ever before, clean water agency attorneys need to keep up to date in the area of professional responsibility. A legal ethics expert will use a series of hypothetical situations to explore legal and ethical issues related to practicing Clean Water Law.

**Tom Kelly**  
Partner  
K&L Gates LLP  
Seattle, WA

9:00 – 9:15      **Break**



## 2012 Election Update:

### What It Means for Clean Water Utilities

The outcome of the 2012 presidential and congressional elections will have a significant influence on the likely regulatory program facing the clean water community in the coming years, as well as on the legislative agenda in the 113<sup>th</sup> Congress. This presentation will discuss the impact of the election results on municipal clean water utilities and outline NACWA's anticipated legislative priorities for the coming year.

**Jeff More**

Principal

The Accord Group

Washington, DC

## Achieving the Utility of the Future:

### Legal Considerations for Innovative Solutions

As municipal clean water agencies look towards the future, many recognize that their role is changing from simply treating a waste stream to producing valuable products and services that provide multiple economic and environmental benefits for their communities. At the same time, current laws and regulations can sometimes make pursuit of these innovative solutions a daunting task. This final panel of the *Seminar* will explore some key legal issues utilities of the future should consider when exploring projects such as water reuse and recycling, energy production, and green infrastructure.

**Sophia Skoda**

Program Manager

East Bay Municipal Utility District

Oakland, CA

**Lauren Kalisek**

Principal

Lloyd Gosselink Rochelle & Townsend, P.C.

Austin, TX

**Susan Anthony**

Director of Legal Services

Milwaukee Metropolitan Sewerage District

Milwaukee, WI

11:00

## Closing Remarks/Adjourn

**Lisa Hollander**

*Chair, NACWA Legal Affairs Committee*