



2014 Wet Weather Consent Decree Workshop

April 30 – May 1, 2014
Renaissance Chicago Downtown Hotel
Chicago, IL

Workshop Agenda

Current to April 24, 2014

Wednesday, April 30

Morning

7:30 – 4:00

Registration

Renaissance

Ballroom Foyer

8:30 – 9:30

Opening Remarks & Workshop Overview

Renaissance

Ballroom A-C

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
Renaissance
Ballroom A-C

Understanding the Process: The State of Play, the Players and How to Play

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
Renaissance
Ballroom A-C

Thinking Outside the Box: Going Beyond the Standard Language

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 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

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

Renaissance

Ballroom A-C

**The New Enforcement Paradigm: Strategies and Tools to
Maximize Economic Flexibility and Environmental Benefit**

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.

Jessica DeMonte
Principal
Squire Sanders
Chicago, IL

Mark Wurschmidt
Deputy Executive Director
Northern Kentucky Sanitation District No. 1
Ft. Wright, KY

6:00 – 7:00
Gold Coast

Reception

Thursday, May 1

Morning

7:30 - 10:30

Renaissance

Ballroom Foyer

Registration

8:00 – 9:45

Renaissance

Ballroom A-C

Opening Remarks

Hilary Meltzer
Vice Chair, NACWA Legal Affairs Committee

New NACWA Consent Decree E-Library Demonstration

Amanda Waters
Deputy General Counsel
NACWA
Washington, DC

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

Karen Hansen
Principal
Beveridge & Diamond, P.C.
Austin, TX

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

Gary Cohen
Special Counsel
Hall & Associates
Washington, DC

9:45 – 10:00

Break

10:00 – 12:00

*Renaissance
Ballroom A-C*

Roundtable Discussions – Key Consent Decree Issues

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!

Roundtable One: *The Mechanics of Wet Weather Enforcement & Dealing With Standard CD Provisions*

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 Theerman
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