



## National Clean Water Law Seminar: *A Seminar for Public Agency Attorneys & Managers*

November 4 - 6, 2015  
Westin Lake Las Vegas  
Henderson, NV

### Wednesday, November 4

#### *Morning*

7:30 – 4:30                      Registration  
*Casablanca Foyer*

7:30 – 9:00                      Continental Breakfast  
*Casablanca Foyer*

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

*Casablanca A/B*

Long one of the most popular elements of the *Law Seminar*, NACWA's Clean Water Act Primer offers a great way to start things off by providing a valuable overview of the environmental law most relevant to clean water practitioners. This preliminary session will cover 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 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

9:30 - 12:00

*Casablanca A/B*

### **PLENARY SESSION I**

#### **Opening Remarks**

#### **Adel Hagekhalil\***

*NACWA President*

Assistant Director

City of Los Angeles – LA Sanitation

Los Angeles, CA

## 2015 Seminar Overview

### **Hilary Meltzer\***

*Chair, NACWA Legal Affairs Committee*

Deputy Chief, Environmental Law Division

New York City Department of Law

New York, NY

### *Keynote Address*

## Key Clean Water Legal Issues – A Federal Perspective

### **John Cruden\***

Assistant Attorney General

Environmental & Natural Resources Division

U.S. Department of Justice

Washington, DC

10:30 - 10:45

Break

## Stealth Regulation: A Mountain or a Molehill?

Clean water agencies are facing an increasingly aggressive regulatory environment. Some major policy decisions – oftentimes with significant permit implications – are being made not through a formal rulemaking process but 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. Formal rulemaking incorporates transparency and public participation, which can bolster the quality and legitimacy of a regulation but can also slow the regulatory process and result in costly delays for regulated entities. This roundtable discussion will strip away the rhetoric and get to the heart of the issue of regulatory overreach. Experts will focus on ways to identify when regulatory overreach is occurring and legal strategies to deal with it, as well as on practical approaches to advancing the clean water sector’s position in dealings with EPA.

### **LaJuana Wilcher\***

Partner

English Lucas Priest & Owsley, LLP

Bowling Green, KY

### **J.G. Andre Monette\***

Partner

Best, Best & Krieger LLP

San Diego, CA

**Fred Andes\***  
Partner  
Barnes & Thornburg LLP  
Chicago, IL

*Afternoon*

12:00 – 2:00

*Casablanca D*

## Lunch Program

### Opening Remarks

**Adam Krantz\***  
Chief Executive Officer  
NACWA  
Washington, DC

**Amanda Waters\***  
General Counsel  
NACWA  
Washington, DC

### *Luncheon Address*

## Clean Water Legal Issues in the Southwest

Potential discussion of how water law/water rights issues are impacting efforts/innovative approaches to address drought in southwest. Also how western water law could impact water reuse/wastewater recycling.

**Pat Mulroy\***  
Senior Fellow, Metropolitan Policy Program  
Brookings Institution  
Las Vegas, NV

2:00 - 5:00

*Casablanca A/B*

## PLENARY SESSION II

### Opening Remarks

**Susan Myers\***  
*Vice Chair, NACWA Legal Affairs Committee*  
General Counsel  
Metropolitan St. Louis Sewer District  
St. Louis, MO

## The Right Tool is Everything: Using Integrated Planning & Affordability to Maximize Flexibility

It's no secret that clean water utilities are being asked to meet more and more stringent legal and regulatory requirements with fewer and fewer resources. But the good news is that concepts like integrated planning and greater sensitivity to affordability concerns have emerged in recent years as important new tools to provide much needed flexibility in meeting regulatory obligations. This panel will explore how these concepts are evolving within the clean water community and what legal strategies

utilities can employ to best use these important tools to provide maximum environmental benefit in the most cost effective, prioritized way.

**Louis McMahon\***

Partner  
McMahon DeGulis LLP  
Cleveland, OH

**Jonathan Rak\***

Partner  
McGuireWoods LLP  
Tysons Corner, VA

3:30 - 3:45

Break

## Let's Make A Deal: The Secrets to Effective Permit Negotiations

Discharge permits are arguably the most important regulatory document impacting clean water utilities. But they can also be a very unique juncture under the CWA where law meets science and real life – a place where the legal requirements of effluent limitations and compliance with water quality standards meet the scientific and practical realities of ambient water quality stressors, financial capability, and other community environmental needs. Figuring out how to balance technical challenges such as translating narrative standards to numeric standards with practical challenges such as a lack of financial resources can create significant legal hurdles for any utility in determining what kind of permit can be accepted. Luckily, expert speakers on this panel will provide valuable legal insights and analysis on how to negotiate a permit that is best for your utility.

**Tiffany Hedgpeth\***

Partner  
Edgcomb Law Group LLP  
Burbank, CA

**Nancy Wilms\***

Partner  
Edgcomb Law Group LLP  
Burbank, CA

**William Plache\***

Senior Counsel, Environmental Law Division  
New York City Department of Law  
New York, NY

**Chris Amantea\***  
Partner  
Squire Patton Boggs (US) LLP  
Los Angeles, CA

## Closing Remarks/ Announcements

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

*Evening*  
6:00 – 7:00  
*Lotus Court*

## Welcoming Reception

### Thursday, November 5

*Morning*  
7:30 - 4:30  
*Casablanca Foyer*

Registration

7:30 - 9:00  
*Casablanca Foyer*

Continental Breakfast

8:00 – 9:00  
*Casablanca A/B*

## Stormwater Primer

Building on the success of the CWA Primer, this session will take a deeper dive into the regulatory and legal landscape surrounding municipal stormwater management. As more clean water utilities take on stormwater responsibilities – and as stormwater issues gain increasing focus from regulators and environmental activist groups – the need for every clean water agency to understand the basics of stormwater regulations is at an all-time high. This primer will not only provide the basic legal and regulatory framework of CWA stormwater requirements, but will also provide an update on current legal developments across the country impacting municipal stormwater management.

**Chris Pomeroy\***  
President  
AquaLaw PLC  
Richmond, VA

**Justin Curtis\***  
Attorney  
AquaLaw PLC  
Richmond, VA

9:00 – 9:15                      Break

9:15 – 12:00  
*Casablanca A/B*

## PLENARY SESSION III

### Opening Remarks

**Hilary Meltzer\***

*Chair, NACWA Legal Affairs Committee*

### Empowering Innovation: The Role of Clean Water Lawyers in Advancing the Utility of the Future

Innovation is the new buzzword in the municipal clean water community. Whether it is using green infrastructure to address wet weather challenges, developing new energy and resource recovery projects that allow POTWs to generate valuable commodities for sale, increasing the role of water reuse and wastewater recycling, water quality trading; or engaging in creative new financing arrangements with the private sector, clean water agencies across the country are moving towards becoming true utilities of the future. But what is the role of the clean water lawyer in helping facilitate this transition? In such a highly regulated environment, how can clean water lawyers help our utilities to innovate while also minimizing risk? Speakers on this panel will examine how lawyers can help their utilities pursue new ideas and approaches while also ensuring needed legal protections.

**Jerry Linder\***

General Counsel  
Clean Water Services  
Hillsboro, OR

**Lauren Kalisek\***

Principal  
Lloyd Gosselink Rochelle & Townsend, P.C.  
Austin, TX

**Brent Fewell \***

Partner  
Troutman Sanders LLP  
Washington, DC

10:30 – 10:45

Break

### The Era of Big Data: Opportunities and Legal Considerations

Utilities have access today to a host of electronic data about their operations and system performance that they have never had before. From real-time monitoring to sophisticated prediction and modeling tools to “smart” sensors connected to the internet, utilities can optimize systems, cut costs and use a wealth of information to run their systems more efficiently. Regulatory expectations with regard to smart data are on the rise. Will regulatory encouragement transform to new requirements? Will utilities be exposed to increased scrutiny and legal liability by gathering so

much data? Will required electronic reporting of data open the door for more enforcement and citizen suits? Will use of real-time data lead to expectations of immediate response? What data security risks should be considered? Experts on this panel will explore the pros and cons of big data

**Paul Freedman\***

President  
LimnoTech  
Ann Arbor, MI

**Tim Braun\***

Enterprise Architect  
EmNet, LLC  
South Bend, IN

**Karen Hansen\***

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

*Afternoon*

12:00 – 2:00

Lunch on Your Own

2:00 – 5:00

*Casablanca A/B*

**PLENARY SESSION IV**

**Opening Remarks**

**Susan Myers\***

*Vice Chair, NACWA Legal Affairs Committee*

***Roundtable Discussion***

**Top CWA Legal Developments of the Year**

Central to any clean water attorney's job is understanding the impact that court decisions and legal developments from around the country may have on CWA obligations and the operations of municipal clean water utilities. 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, including the Waters of the U.S. rule and the new Water Quality Standards Rule, and provide critical insights for both clean water attorneys and managers on how these issues could affect your utility.

**Hilary Meltzer\***

*Chair, NACWA Legal Affairs Committee*

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

**Dale Mullen\***  
Partner  
McGuireWoods, LLP  
Richmond, VA

**Sam Brown\***  
Senior Attorney  
Hunton & Williams, LLP  
San Francisco, CA

3:30 – 3:45

Break

### **Get Off My Lawn! The Role of Clean Water Utilities on Private Property**

Clean water agencies are increasingly finding that in order to cost effectively accomplish goals and meet regulatory obligations they must work directly with private property owners. This includes both residential and commercial owners, and can involve projects like lateral replacement, downspout disconnection, installing green infrastructure, reducing impervious surface, illicit discharge detection and elimination and other efforts to address stormwater runoff and inflow/infiltration issues. Private property projects require numerous legal considerations including the adequacy of “right of entry” authority, indemnification, justification of public expenditures on private property, future ownership and maintenance responsibility, and tax questions related to utility incentives to individual property owners. In addition, determining an appropriate funding model can have financial, political, legal and public relations implications. Expert speakers on this panel will explore some of these challenges associated with utility work on private property.

**Andy Lukas\***  
Vice President, Wet Weather Leader  
Brown and Caldwell  
Milwaukee, WI

**Todd Aschbacher\***  
Attorney III  
Metropolitan St. Louis Sewer District  
St. Louis, MO



**Katherine Lazarski\***  
Senior Staff Attorney  
Milwaukee Metropolitan Sewerage District  
Milwaukee, WI

## Closing Remarks/Announcements

**Susan Myers\***  
*Vice Chair, NACWA Legal Affairs Committee*

*Evening*

6:00 – 7:00

*Andalusian Garden*

## Reception

## Friday, November 6

*Morning*

7:30 - 10:00

*Casablanca Foyer*

Registration

7:30 – 8:30

*Casablanca Foyer*

Continental Breakfast

8:00 - 11:00

*Casablanca A/B*

## PLENARY SESSION V

### Opening Remarks

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

8:00 – 9:00

### Legal Ethics: Going Beyond the Model Rules

This presentation will explore common ethics issues for in-house attorneys.

**Philip B. Phillips\***  
Partner  
Foley & Lardner LLP  
Detroit, MI

9:00 – 10:00

### Enforcement & Consent Decree Developments

The world of clean water enforcement is always evolving, and utilities need to stay on top of the latest information. This final two-part panel will provide some of the most important information of the entire *Seminar*, so be sure not to miss it!

#### Part 1: Clean Water Act Enforcement

Seasoned clean water attorneys will discuss and analyze important recent developments involving clean water enforcement including consent decree negotiations, reopening and modification of existing decrees, and how some major cities are already beginning to prepare for the end of their long-term consent decree obligations.

**John Sheehan\***  
Member  
Clark Hill PLC  
Washington, DC

**Linda E. Benfield\***  
Partner  
Foley & Lardner LLP  
Milwaukee, WI

10:00 – 10:10

Break

## **Part 2: Third Party Enforcement**

Experts will discuss efforts by environmental activist groups to influence the consent decree process and developments involving citizen suits.

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

**Adam Link\***  
Director of Government Affairs  
California Association of Sanitation Agencies  
Sacramento, CA

11:00

Closing Remarks/Adjourn