

CLEAN WATER ACT 2019: LAW AND REGULATION

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ALI **CLE**

ANNUAL ADVANCED COURSE
and LIVE VIDEO WEBCAST

MAY 2 - 3, 2019
WASHINGTON, D.C.

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PLANNING CHAIRS *(also on faculty)*

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Environmental Law Institute

Meredith Weinberg
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FACULTY

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Assistant Administrator, Office
of Chemical Safety and Pollution
Prevention, U.S. Environmental
Protection Agency *(invited)*

Pamela R. Esterman
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Daniel E. Estrin
General Counsel & Advocacy
Director, Waterkeeper Alliance

Madeline P. Fleisher
Senior Attorney, Environmental Law
& Policy Center

John Goodin
Acting Director, Office of Wetlands,
Oceans and Watersheds, U.S.
Environmental Protection Agency
(invited)

R. Juge Gregg
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Environment and Natural Resources
Division, U.S. Department of Justice

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Senior Policy Analyst, Association of
State Wetlands Managers

**ALI CLE Senior Program
Attorney:** Amy S. Weinberg
(aweinberg@ali-cle.org)

Additional faculty to be confirmed.

“

*Kudos for bringing together a
diverse group of professionals
and for serving as a catalyst for
engaging and lively discussions.
Great job!*

”

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Go to www.ali-cle.org/CA014
to register online or for more
information about the program, hotel
accommodations, study materials, and
CLE credit.

PROGRAM OVERVIEW

More than just an update on current developments, this singular course brings together cutting-edge issues in water law and examines them in high-level, integrated discussions.

Join a top-flight faculty – including private practitioners, public interest advocates, and senior public officials from federal and state/local regulators and enforcement agencies – for in-depth legal analyses, policy perspectives, and insights on the complex questions challenging environmental attorneys and related professionals in water law today. This year's program examines these and other emerging issues:

- What does “compliance” with water quality standards mean?
- Does the CWA prohibit the release of pollutants from a source when they eventually enter surface waters through groundwater migration?
- Absent CWA regulation, what laws apply to curtail PFAS contamination?
- Is “cooperative federalism” working in the real world? Has anything changed in the relationship between the EPA and the states?
- With their federal consent decrees terminating, what lies in the future for regulating combined sewer systems?

Register today for this unique conference! With a collegial learning environment and a host of opportunities to interact with like-minded professionals from across the country, you will come away informed, connected, and ready to tackle the latest legal challenges.

AGENDA

ALL TIMES EASTERN

THURSDAY, MAY 2

8:00 AM Registration and Continental Breakfast

WEBCAST SEGMENT A

8:45 AM Introduction to the Clean Water Act

Whether you're new to this area of law or you're simply looking for a refresher before digging into the details, this optional introductory lecture will lay out the general framework of the Clean Water Act.

9:45 AM Introductory Remarks

10:00 AM The Status and the Future of Waters of the United States

The status of what is a “Water of the United States” is as uncertain as ever. Different legal definitions apply in different states. There are efforts being made by EPA and the Corps to redefine its meaning, but the agencies are facing obstacles in the courts, and the litigation is ongoing. This panel explores the status of the EPA and Corps' rulemaking efforts, the ongoing litigation, responses to this uncertainty from the states, and what practitioners should know about the current and future implications on permitting and compliance.

11:15 AM Networking Session and Continental Breakfast

11:30 AM **Are Releases of Pollutants into Groundwater Prohibited by the CWA?**

Does the CWA prohibit the scenario where pollutants are released from a source and those pollutants eventually enter surface waters through groundwater migration? This question has created a trend of conflicting commentary in the courts, including splits in the federal Courts of Appeal. This panel will explore the nuances of this legal question, the recent court decisions, EPA's request for comment on potential rulemaking and the future EPA administrative actions, litigation trends, and the practical implications.

12:45 PM Lunch Break (*lunch provided by ALI CLE and ELI*);
Keynote Address – *Speaker to be confirmed*

WEBCAST SEGMENT B

2:00 PM **Water Quality Standards: What Does "Compliance" Mean and What Are the Challenges?**

Water quality standards are a fundamental pillar of the CWA. However, historically, at times, they have been underdeveloped, not fully utilized, or misapplied, depending on your perspective. This panel explores the question: what does "compliance" with water quality standards mean? The question will be examined in the context of permitting, litigation and other developments associated with nutrients, toxic pollutants, federal-state disagreements, enforcement, and other trending developments.

3:15 PM **Networking and Refreshment Break**

3:30 PM **CWA Enforcement During the Trump Administration**

Enforcement is a critical tool of CWA implementation and has traditionally been used as not only a driver for compliance, but used by third-parties to expand the scope and reach of the CWA. There has been much discussion about whether CWA enforcement is less pronounced in the Trump Administration. This panel explores whether that is correct, in part, by examining the EPA enforcement trends, the new EPA and DOJ enforcement policies, state enforcement, and the trends and developments with citizen suits.

4:45 PM **Adjournment for the Day**

FRIDAY, MAY 3 _____

8:00 AM **Networking Session and Continental Breakfast**

WEBCAST SEGMENT C

8:30 AM **Stormwater and Wastewater Management: Trends and Challenges for the Private and Public Sector**

Stormwater and municipal wastewater pose unique challenges to attaining water quality and these sources have distinct regulatory frameworks under the CWA. Recent developments and various issues that are coming around the corner will create additional complications or opportunities, depending on your perspective. This panel will explore those trending issues, including the litigation and EPA actions related to stormwater runoff from impervious surfaces and the EPA and State use of residual designation authority, stormwater and wastewater permitting and the challenge of addressing water quality, and the future of the regulation of combined sewer systems in the era when their federal consent decrees are terminating, among other issues.

9:45 AM **PFAS: What They Are, Why They Matter, and How They Are Regulated**

PFAS – per- and polyfluoroalkyl substances – are a class of manmade chemicals that are ubiquitous and costly to remediate. Various forms of PFAS chemicals (PFOA and PFOS particularly) have been found in drinking water in states across the nation. Members of the U.S. Congress have launched a taskforce and introduced legislation to spur the investigation and cleanup of PFAS contamination nationwide, and EPA has increased its efforts to identify the presence of PFAS in drinking water and other media. But some question whether any of this is enough. One recommendation has been to develop a maximum contaminant level for PFAS under the Clean Water Act. Another is to list PFAS as a hazardous substance under Superfund. Other statutory options are also being explored, while states push ahead with their own regulatory approaches. This panel will explore what lies ahead for PFAS management and regulation, and what laws and authorities exist at the state and federal level for management.

11:00 AM **Networking and Refreshment Break**

11:15 AM **Federal and State Governments: Cooperative Federalism in Action**

One constant theme of the Trump Administration is cooperative federalism. EPA's message is that the States should be in the driver's seat to implement the CWA, with federal oversight, but not day-to-day interference. How does cooperative federalism work in the real world under the CWA, have there been tangible changes in the relationship between the EPA and the States, and where are there friction points and trending developments? This panel explores those issues, including the use of CWA Section 401 by the States, related litigation, and potential EPA administrative actions; the potential for more States to assume the CWA Section 404 program; and state and tribal development and revisions to water quality standards, among other issues.

12:30 PM **Lunch Break (on your own)**

WEBCAST SEGMENT D

1:45 PM **One Piece of the Puzzle: How Does the CWA Fit With Other Federal and State Environmental Statutes?**

The CWA is one tool to address water quality and protection of the environment. It isn't always clear how the CWA aligns (or does not align) with the other federal and state legal authorities. How does the CWA interplay with, for instance, the federal SDWA, RCRA, and CERCLA? How do state laws on wetlands align with how they are regulated under the CWA? How do state laws on water quantity impact the ability of the CWA to regulate flow to address water quality? Recent developments demonstrate there isn't always alignment, there are implementation concerns, and there are questions about how these authorities are supposed to work together to protect the environment.

3:00 PM **Networking and Refreshment Break**

3:15 PM **Ethics for the Environmental Lawyer**

Whether you're new to this area of law or you're simply looking for a refresher before digging into the details, this optional introductory lecture will lay out the general framework of the Clean Water Act.

4:15 PM **Adjournment**

Total 60-minute hours of instruction: 12, including one hour of ethics (includes attendance at the optional introductory lecture)

Suggested Prerequisite: Limited experience in legal practice in subject matter or completion of Basic CLE Course in subject matter

Educational Objective: Maintenance of professional competence as a practitioner; provision of information on recent legal developments

Level of Instruction: Advanced

ADDITIONAL INFORMATION

HOTEL ACCOMMODATIONS

The course will be held at Hunton Andrews Kurth LLP, located at 2200 Pennsylvania Avenue, NW, Washington, DC 20037.

A limited number of rooms have been reserved at The Wink Hotel. Room rate: \$269 per night for a Queen, single occupancy. This rate will be made available until April 1, 2019. Registrants must make their own hotel reservations and request the American Law Institute CLE group to qualify for the reduced rate. Reservations may be made by calling the Wink Hotel, 1143 New Hampshire Avenue NW, Washington, DC 20037; (833) LUV-WINK or (202) 775-0800, or reserving online at <http://bookings.ihotelier.com/bookings.jsp?groupID=2374587&hotelID=103690>. Confirmations will be sent by the hotel. Please read the cancellation policy carefully.

STUDY MATERIALS

Course materials will be available in electronic format for download the week before and during the course. All registrants are advised to bring laptops or tablets to the course to view the course materials, including updates.

Go to www.ali-cle.org/CA014 for more info about: Registration/cancellation/requirements for persons with disabilities/scholarships.

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