



LAW SEMINARS INTERNATIONAL

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A Comprehensive Virtual Conference on New Developments for The Clean Water Act and Wetlands in Oregon

*Updates on the Waters of the US redefinition and the NEPA Re-Write;
regulatory, legislative, and case law developments;
practical tips for resolving water quality issues
September 10 & 11, 2020 | Via Zoom*

Agenda—Day 1

8:30 Registration Opens

9:00 Introduction & Overview

Richard M. Glick, Esq., *Program Co-Chair*
Davis Wright Tremaine ~ Portland, OR

Laura M. Kerr, Esq., *Program Co-Chair*
Stoel Rives ~ Portland, OR

9:15 **Current Scope of Federal Clean Water Act (CWA) Jurisdiction**

SCOTUS decision in the County of Maui case holding that a permit is required when there is a direct discharge from a point source into navigable waters or when there is the "functional equivalent of a direct discharge"

Richard M. Glick, Esq., *Program Co-Chair, Moderator*

A technical perspective on what it will take to prove your case under the functional equivalency standard

Robert Annear, Ph.D, PE, *Principal Engineer*
Geosyntec Consultants ~ Portland, OR

10:30 Break

10:45 **The NEPA Re-Write**

What it entails; potential impact on wetlands and other CWA permitting

Owen L. Schmidt, Esq.
Owen L. Schmidt LLC ~ Portland, OR

12:00 Lunch (on your own)

1:15 **Drinking Water and Polyfluoroalkyl Substances (PFAS) as Emerging Pollutants of Concern**

Understanding the chemistry: Toxicity, occurrence, fate and transport of PFAS chemicals

Lawrence B. Burke, Esq.
Davis Wright Tremaine ~ Portland, OR

The process of developing regulatory standards for PFAS: Application of the Clean Water Act, the Safe Drinking Water Act, and the Comprehensive Environmental Response, Compensation, and Liability Act

Robert Baumgartner,
Regulatory Affairs Assistant Director
Clean Water Services ~ Hillsboro, OR

PFAS litigation update

Jeff B. Kray, Esq.
Marten Law ~ Seattle, WA

3:15 Break

3:30 Section 404 Permitting (Dredged and Fill Discharges into WOTUS) Developments

Factors to consider: A wetlands lawyer and consultant talk through hypothetical project scenarios

Brien J. Flanagan, Esq.
Schwabe, Williamson & Wyatt ~ Portland, OR
Catie Kerns, President
Stewardship Solutions, Inc. ~ Portland, OR

4:30 Special Address: A Big Picture Look at Water Quality Policy For and How it Fits into Oregon's Overall Natural Resource Management Strategy

Richard M. Whitman, Esq., Director
Department of Environmental Quality ~ Portland, OR

5:00 Adjourn Day 1

Agenda—Day 2

9:00 Section 401 (State Certification of Water Quality) Permitting Developments

Hoope Valley Tribe case fallout; EPA/Corps rewrite of 401 rules; recent litigation

Beth S. Ginsberg, Esq.
Stoel Rives ~ Seattle, WA

9:30 Regulatory Tools: Total Maximum Daily Loads (TMDLs) and Their Role for Implementing a Clean Water Strategy

How the concept developed and has been implemented; lessons from earlier implementations

Craig N. Johnston, Esq., Professor of Law
Lewis & Clark Law School ~ Portland, OR

10:15 Break

10:30 TMDLs and Toxics Control

Case study of the TMDL for mercury in the Willamette River system: Overview of the legal issues

Michael J. Karnosh, Esq.,
Ceded Lands Program Manager
Confederated Tribes of Grand Ronde ~ Grand Ronde, OR

Practical issues from the state's perspective

Diane Lloyd, Esq., Senior Assistant Attorney General
Oregon Department of Justice ~ Portland, OR

Practical issues from an environmental protection perspective

Allison Michelle LaPlante, Esq., Co-Director
Earthrise Law Center ~ Portland, OR

Practical issues from the agricultural perspective

Mary Anne Cooper, Esq.,
Vice President of Public Policy
Oregon Farm Bureau ~ Salem, OR

12:15 Lunch (on your own)

1:30 Update from the Legislature and Oregon's Department of Environmental Quality

Legislature: Update on water quality-related bills in the 2020 session and what to expect in 2021

Michael Dembrow, (D) District 23

Oregon State Senate ~ Salem, OR

Tracy Rutten, Intergovernmental Affairs Associate

League of Oregon Cities ~ Salem, OR

Policy priorities at the Department of Environmental Quality

Jennifer Wigal, Water Quality Deputy Administrator

Department of Environmental Quality ~ Portland, OR

2:45 Break

3:00 Stormwater: Source Control and the Relationship to Cleanups

Legal perspective

Laura M. Kerr, Esq., Program Co-Chair

Technical perspective

Kim Marcus, Partner, Principal Geologist

Environmental Resources Management ~ Portland, OR

4:00 TMDLs and Temperature Control

Case study of the Klamath River

Richard S. Deitchman, Esq.

Somach Simmons & Dunn

Sacramento, CA

Thomas P. Schlosser, Esq.

Morisset Schlosser Jozwiak & Somerville

Seattle, WA

5:00 Evaluations and Adjourn

Who Will Benefit from the Conference

Attorneys, environmental, real estate and land use professionals, property owners and governmental officials involved with water quality, wetland, and habitat issues

A Word from Our Co-Chairs

Last December, the Environmental Protection Agency and the Army Corps of Engineers finalized repeal of the 2015 Clean Water Rule defining the Waters of the United States (WOTUS). The result is to narrow the scope of federal jurisdiction over water infrastructure and wetlands under the Clean Water Act. The repeal is part of a broad Trump Administration effort to roll back environmental protections.

To a certain extent, local, state, and federal regulation under the Clean Water Act will remain in flux while court cases and election year politics play themselves out. However, Oregon has not been simply been sitting back to await developments. The time is right to take a close look at Oregon's response to the rollback. This includes a Special Address from Richard M. Whitman, Director of the Oregon Department of Environmental Quality, on how water quality fits into the state's overall natural resource management strategy.

Our detailed coverage of specific topics starts with an analysis of the SCOTUS decision in the County of Maui case and the new standard for determining that an indirect discharge is the "functional equivalent of a direct discharge." You'll hear practical tips for proving your case under that new standard. We'll also cover EPA's new substantive and procedural rules.

You will hear strategies for moving projects forward compatible with state and local environmental protection goals. This includes anticipated impacts on permitting under Section 401 for certification of water quality impacts and under 404 dredge and fill discharges affecting wetlands.

We will discuss stormwater source control and its relationship to cleanups. Total Maximum Daily Loads (TMDLs) have come into greater use a regulatory tool. You'll hear case studies of the effectiveness of the TMDL for mercury in the Willamette River system and for temperature in the Klamath River.

There are new issues on the horizon including Perfluorinated "forever" Chemicals (PFCs) as emerging pollutants of concern for drinking water quality. We'll also take a "what next" look at future legislative action and DEQ administrative pursuit of its policy priorities.

It promises to be an information packed two days and we'll keep you safe by presenting the program via a high-quality Zoom webcast. Register soon!

~ Richard M. Glick, Esq. of Davis Wright Tremaine and
Laura M. Kerr, Esq. of Stoel Rives, Program Co-Chairs

Registration & Other Conference Information

Tuition: Regular tuition for this program is \$895 with a group rate of \$805 each for two or more registrants from the same firm. For government employees and Tribal Members, we offer a special rate of \$670. For students, people in their job for less than a year, and public interest NGO's, our rate is \$447.50. All rates include admission to all program sessions and course materials. Make checks payable to Law Seminars International. As an added value, you will receive access to audio and video recordings at no extra charge.

Financial aid is available to those who qualify. Contact our office for more information.

Substitution & Cancellation: You may substitute another person at any time. We will refund tuition, less a \$50 cancellation fee, if we receive your cancellation by 5:00 p.m. on Friday, September 4, 2020. After that time, we will credit your tuition toward attendance at another program or the purchase of an audio or video replay.

Continuing Education Credit: Live credits: This program qualifies for 12.25 OR MCLE, 12.25 ABCEP environmental professional, and 12.25 AICP planner credits. Upon request, we will help you apply for CLE credits in other states and other types of credits.

Time Shift Your Content: Audio and video replay files, with course materials, are available for download or on a flash drive at the same price as live attendance. Files are available for downloading five business days after the program or from the date we receive payment. Flashdrive orders are sent via First Class mail within seven business days after the program or from the date we receive payment. The course materials alone are available for \$100.

Faculty

Richard M. Glick, Program Co-Chair, is a partner at Davis Wright Tremaine. He helps clients navigate the labyrinth of federal and state environmental permitting processes for major infrastructure projects: Finding a path to "yes" through a web of regulatory complexity is the most satisfying part of my practice.

Laura M. Kerr, Program Co-Chair, was an environmental science researcher and educator before becoming a lawyer and joining Stoel Rives. She guides clients through the multitude of regulations governing air and water quality, waste management, chemical spills, land contamination and other environmental liabilities.

Richard M. Whitman, Special Address, is the Director of the Oregon Department of Environmental Quality. Before joining DEQ, he worked in Oregon Governors Kate Brown and John Kitzhaber's Natural Resources Office as Policy Director.

Robert Annear, Ph.D, PE is a Principal Engineer at Geosyntec Consultants where he performs hydrodynamic and water quality modeling and data analyses. These support clients with Clean Water Act regulatory permits and requirements, stormwater management, surface water system assessments, climate change studies, Total Maximum Daily Load (TMDL) development, implementation, and compliance, Endangered Species Act compliance, NPDES Permitting.

Robert Baumgartner is the Regulatory Affairs Assistant Director for Clean Water Services. He is a former Environmental Engineer, Water Quality Manager and Deputy Administrator with Oregon Department of Environmental Quality. In that role, he developed the State's first TMDL program along with the first water quality based NPDES permit evaluation process.

Lawrence B. Burke is a partner at Davis Wright Tremaine. He uses his background in engineering and industry to support his clients through an interdisciplinary approach to his environmental, health and safety practice. His work encompasses a range of issues, including those relevant to consumer products, groundwater contamination, and toxic exposures.

Mary Anne Cooper is Vice President of Public Policy for the Oregon Farm Bureau. In addition to representing the Oregon Farm Bureau on legal issues, she works with state and federal agencies on water quality, water supply, removal-fill, Endangered Species Act, NEPA, Clean Water Act, land use, acquisition, and other natural resources issues.

Richard S. Deitchman is a shareholder at Somach Simmons & Dunn. He focuses his practice on water rights and natural resources. He is actively involved in the ongoing Klamath Basin Adjudication, and other matters involving water users on the Oregon-California border.

Michael Dembrow is the state senator for District 23, covering portions of NE and SE Portland and the city of Maywood Park. He currently serves as Chair of the Senate Environment and Natural Resources Committee.

Brien J. Flanagan is a partner at Schwabe, Williamson & Wyatt. He helps manufacturers, marine terminals and public ports seek the permits, authorizations and financing they need to develop state-of-the-art facilities. He has handled all aspects of the development process including permitting, investigation and remediation of contaminated property, and ongoing environmental compliance.

Beth S. Ginsberg, a partner at Stoel Rives, is a former Department of Justice attorney and EPA Senior Policy Advisor. She focuses her practice on complex infrastructure projects, traditional and renewable energy resources, and industrial facilities at the cross roads of an evolving regulatory landscape.

Craig N. Johnston is a Professor of Law at Lewis & Clark Law School. As a former Assistant Regional Counsel with the U.S. Environmental Protection Agency in Boston, he worked on major enforcement matters under both the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA).

Michael J. Karnosh is the Ceded Lands Program Manager for the Confederated Tribes of Grand Ronde. The Program represents the Tribe's environmental and sovereignty interests over nearly 14 million acres of ceded lands, usual and accustomed areas, and aboriginal homelands.

Catie Kerns is President of Stewardship Solutions, Inc. She is a permitting strategist and community affairs consultant that helps companies manage their reputation while seeking the permits and authorizations they need to optimize their business plans and seize market opportunities. She has a unique interest, and expertise, in the National Environmental Policy Act (NEPA) and US Army Corps of Engineers permitting.

Jeff B. Kray is a partner at Marten Law and is an environmental litigator. He regularly advises businesses and local governments in water quality permit compliance and defense matters, emerging contaminants (including PFAS) in water supplies, stormwater pollution prevention, hazardous waste spill prevention and cleanup, and cost recovery litigation.

Allison Michelle LaPlante is Co-Director of the Earthrise Law Center and a clinical professor of law at Lewis & Clark Law School. She she focuses primarily on issues and cases concerning pollution control.

Diane Lloyd is a Senior Assistant Attorney General in the Oregon Department of Justice. She serves as contact counsel for the Oregon Department of Environmental Quality's Water Quality Program, the Department of Geology and Mineral Industries, and the Watershed Enhancement Board.

Kim Marcus is a Principal Geologist and the partner in charge of the Portland office for Environmental Resources Management. He provides stormwater support on many sites including heavy and light industry, hospitals, large residential complexes, military facilities, and various other businesses.

Tracy Rutten currently serves as an Intergovernmental Relations Associate for the League of Oregon Cities, advocating on behalf of Oregon's 241 cities in the areas of water supply, water quality, energy, environmental issues, solid waste, recycling and public contracting.

Thomas P. Schlosser, Morisset Schlosser Jozwiak & Somerville, represents Tribes on issues involving fisheries, timber, water, energy, cultural resources, contracting, tax and federal breach of trust. He also is frequently involved in tribal economic development and environmental regulation.

Owen L. Schmidt, Owen L. Schmidt LLC, is a former Senior Counsel to the U.S. Department of Agriculture and is known for his NEPA expertise. He has advised the Forest Service, Natural Resources Conservation Service, and other USDA agencies in Washington and Oregon.

Jennifer Wigal is the Water Quality Deputy Administrator for the Oregon Department of Environmental Quality. Prior to DEQ, she built her expertise in water quality programs at U.S. EPA Headquarters working in water quality standards and permitting.