



ALICLE

ANNUAL ADVANCED COURSE
and LIVE VIDEO WEBCAST

Environmental Litigation 2018

*Learn effective case strategies for
handling environmental claims in
today's regulatory environment.*

JUNE 21-22, 2018
WASHINGTON, D.C.

PLANNING CHAIRS *(also on faculty)*

Daniel Riesel

Sive, Paget & Riesel, P.C.

Mark A. Chertok

Sive, Paget & Riesel, P.C.

FACULTY

Tami Lyn Azorsky

Dentons

James A. Bruen

Farella Braun + Martel LLP

Dimple Chaudhary

Senior Attorney,
Natural Resources Defense Council

Nadira Clarke

Katten Muchin Rosenman LLP

John C. Cruden

Beveridge & Diamond PC

Neal D. Durant, Ph.D.

Senior Principal Engineer, Geosyntec Consultants, Inc.

Honorable Ronald J. Hedges

Dentons; former U.S. Magistrate Judge, District of New Jersey

Peter Hsiao

Morrison & Foerster LLP

Christopher Locke

Farella Braun + Martel LLP

Thomas A. Mariani, Jr.

Chief, Environmental Enforcement, Environment and Natural Resources Division, U.S. Department of Justice

Moneen Nasmith

Staff Attorney, Earthjustice

Craig J. Pritzlaff

Assistant Attorney General and Deputy Chief – Litigation, Environmental Protection Division, Office of the Attorney General of Texas

Anthony Z. Roisman

Chairman, Vermont Public Utility Commission

Justin A. Savage

Sidley Austin LLP

Honorable Craig B. Shaffer

Magistrate Judge, U.S. District Court for the District of Colorado

Lemuel M. Srolovic

Chief, Environmental Protection Bureau, New York State Attorney General's Office

ALI CLE Senior Program Attorney:

Amy S. Weinberg (aweinberg@ali-cle.org)

Additional faculty to be confirmed

“ *The faculty, as with all ALI programs I have had the privilege to attend, were top flight and the leaders in their respective fields. It was enlightening and invaluable to have them share their knowledge, experience, and wisdom with attendees.* ”

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13.50 CLE CREDIT HOURS INCLUDING
1.00 HOUR OF ETHICS

Go to www.ali-cle.org/CZ017 to register online or for more information about the program, hotel accommodations, study materials, and CLE credit.

PROGRAM OVERVIEW

Explore procedural and practice problems facing environmental litigators – including potential enforcement changes – and gain insights for developing effective case strategies.

This dynamic, advanced course brings together experienced practitioners from both sides of the bar, the government, and the bench for sophisticated analysis, real-world advice, and practical instruction. Through faculty-led demonstrations, learn how to avoid common problems in environmental litigation and hear a judge’s perspective on the arguments and the issues. Topics include:

- Trump Administration effects on environmental enforcement and litigation
- State-initiated and citizen suit litigation: The new “enforcement” mechanisms
- Litigating toxic torts and CERCLA, RCRA, and Safe Drinking Water Act cases
- Selecting, qualifying, and preparing scientific experts
- Allocation and apportionment in CERCLA cases
- Navigating the maze of electronic data
- Third-party neutrals and special masters

If you’re an environmental lawyer looking to win in administrative and judicial forums, this unique course is a must!

“ *Very good program!
All were outstanding
speakers and interesting.* ”

AGENDA

ALL TIMES EASTERN

THURSDAY, JUNE 21

- 8:00 AM** Registration and Continental Breakfast
- 8:45 AM** Welcome and Announcements – *ALI CLE Staff*

Video WEBCAST SEGMENT A

- 8:50 AM** Introductory Remarks and Course Overview

9:00 AM

The Prerequisites: Recent Developments in Jurisdiction, Standing, Ripeness, and Judicial Review

- Standing, pleading, and proof
- Compilation of the record; evidence outside the record
- Discovery in agency review cases
- Judicial review involving guidance documents
- Deference to administrative agencies; Chevron revisited
- Pre-enforcement review

- 9:45 AM** **Managing and Using Electronic Data in Complex Environmental Cases**
- The duty to preserve and the litigation hold
 - Mastering the digital maze
 - Cooperation and proportionality
 - Spoliation of samples and other physical evidence and spoliation of ESI under amended Rule 37(e)
 - Judicial management

10:45 AM **Networking and Refreshment Break**

- 11:00 AM** **Faculty Demonstration: Motion for Discovery of ESI**
- The necessary papers
 - Proof of proportionality
 - Waivers: privilege; social media
 - Hearing strategies

- 11:45 AM** **Litigating Emerging Groundwater Contaminants**
- Toxic Torts
 - CERCLA
 - Safe Drinking Water Act
 - RCRA

12:30 PM **Lunch with Faculty and Registrants (*provided by ALI CLE*)**

Video WEBCAST SEGMENT B

- 1:30 PM** **Litigation in the New Era**
- State-initiated litigation
 - New state-federal enforcement alignment
 - Collisions with the federal approach
 - Resurgence of citizen suit litigation

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

- 3:15 PM** **Scientific Evidence and Experts in Environmental Litigation**
- Scientific evidence in the courts
 - Selection and qualification of experts
 - Preparation of experts
 - The expert's report and deposition
 - Confidentiality and privilege
 - Daubert and its progeny
 - Motions to exclude experts: When and how to make them
 - Effective direct and cross examination

- 4:45 PM** **Faculty Demonstration: *Daubert* Motion**
- Scientific evidence in the courts
 - Selection and qualification of experts
 - Preparation of experts
 - The expert's report and deposition
 - Confidentiality and privilege
 - Daubert and its progeny
 - Motions to exclude experts: When and how to make them
 - Effective direct and cross examination

5:15 PM **Adjournment for the Day**

FRIDAY, JUNE 22

8:00 AM Continental Breakfast and Networking Session

Video WEBCAST SEGMENT C

8:30 AM The Prerequisites: Recent Developments in Jurisdiction, Standing, Ripeness, and Judicial Review

- Availability of Section 107 and/or Section 113 to private litigators
- Joint and several liability; life after Burlington Northern
- Arranger liability
- Statutes of limitation and other defenses
- Third-party practice and trial phasing
- Consent orders, voluntary clean up agreements, and contribution protection
- Allocation and apportionment
- Strategy in the “big case”
 - Potentially Responsible Party (PRP) organization
 - Coping with Section 106 orders
 - De minimis applications
 - Practice before third-party neutrals and special masters

9:45 AM The Gorilla in the Closet: Natural Resources Damages

- Marshalling the NRD case
- NRD assessments
- Use of surveys and experts
- The trustees’ case
- The defenses and how to deploy them

10:45 AM Networking and Refreshment Break

12:15 PM Faculty Demonstration: The Simple Turned Complex - Authentication of Key Documents

- The necessary steps
- Ways to prevent admissibility

12:45 PM Lunch with Faculty (*on your own*)

Video WEBCAST SEGMENT D

1:45 PM Faculty Demonstration: Direct and Cross-Examination of an Expert at Trial

Direct and cross-examination of an expert followed by faculty discussion of common trial problems relating to experts in environmental litigation

3:30 PM Networking and Refreshment Break

3:45 PM Ethics for the Environmental Litigator

4:45 PM Adjournment

ADDITIONAL INFORMATION

HOTEL ACCOMMODATIONS

The course will take place in the office of Dentons, located at 1900 K Street, NW, Washington, DC 20006.

A special rate has been arranged with [The Mayflower Hotel](#). Room rate: \$279 per night, single or double occupancy. This rate will be made available until May 31, 2018. Registrants must make their own hotel reservations and request the American Law Institute CLE Environmental Litigation block to qualify for the reduced rate. Reservations may be made by calling The Mayflower Hotel, 1127 Connecticut Avenue NW, Washington, DC 20036; (202) 347-3000 or (800) 228-7697, or online [HERE](#). 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. **Print materials will not be distributed.** 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/CZ017 for more info about: Registration/cancellation/requirements for persons with disabilities/scholarships.

MANDATORY CLE CREDIT

ALI CLE programs are accredited in all MCLE jurisdictions. Credit in CO is available by reciprocity; credit in ID, LA, and RI is available upon request. For specific information on CLE, CPE, or other professional accreditation in your state, e-mail TeamMCLE@ali-cle.org, go to <http://www.ali-cle.org/mcle>, or call 1-800-CLE-NEWS.