



ANNUAL REPORT 2003-2004

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MESSAGE FROM THE DIRECTOR

June 15, 2004

Dear Colleague:

I am pleased to introduce the Tulane Environmental Law Clinic's 2003-2004 Annual Report.

This has been a particularly exciting year. In a Fifth Circuit case we brought on behalf of the Louisiana Environmental Action Network, the court vacated EPA's approval of a state plan to allow inter-pollutant trading of air emission credits. The plan would have allowed industry to emit more volatile organic compounds (many of which can cause cancer) into the air in our client's communities in return for reductions in less dangerous nitrogen oxides. Following the Court's order, Louisiana prepared a new draft plan that dropped the inter-pollutant trading scheme. Also, in a case we brought on behalf of three individuals, a Louisiana District Court vacated a Louisiana water-quality certification that gave the go-ahead for destruction of wetlands without a full assessment of effects on flooding and water quality. This creates an important precedent since the state has historically refused to perform environmental assessments when signing off on Army Corps permits to destroy wetlands. And on behalf of St. Bernard Citizens for Environmental Quality, Inc. and the Louisiana Bucket Brigade, we launched a major Clean Air Act citizen enforcement suit against Chalmette Refining, L.L.C.'s oil refinery in St. Bernard Parish.

We began the fiscal year by welcoming a new staff attorney, Christopher Brown, formerly with the Texas Commission on Environmental Quality. Along the way, our long-time legal secretary Joyce Broden left to join a private law firm specializing in toxic tort work, and Angela Jenkins joined the team to fill the breach. And as the fiscal year ends, we are losing Rebecca (Dayries) Doucet, who has been an outstanding Community Outreach Director, but now is moving to Maine. Christine Harvey, previously a reporter for the *Times of Northwest Indiana*, has agreed to take over the Community Outreach Program.

Directing the Clinic continues to be an endless source of excitement, elation, heartbreak, and inspiration. With 26 student attorneys, four staff attorneys (including me), a Community Outreach Program that includes a director and undergraduate interns, and a legal secretary, we keep a lot of balls in the air. In fact, before fully savoring our latest victory, or recovering from the most recent setback, we're usually back in the ring for the next round. And rather than burning out, our lead litigators graduate – so the staff draws on a constant flow of new energy, ideas, and enthusiasm.

We appreciate your support and look forward to another year.

Very truly yours,



Adam Babich, Clinic Director

MISSION



(1) To train effective and ethical lawyers by guiding law students through actual client representation and

(2) To represent those who could otherwise not afford competent legal help on environmental issues. The Clinic broadens public participation in environmental decisions by giving a voice to clients who would not be heard otherwise.

BACKGROUND AND OVERVIEW

The Tulane Environmental Law Clinic is part of a top-five ranked environmental law program and has been honored by the American Bar Association with its inaugural “Distinguished Environmental Achievement Award” in 2000 for “exerting leadership that directly resulted in significant improvements in the substance, process, or understanding of environmental law or policy.” Tulane University Law School started its Environmental Law Clinic in 1989 to offer students the real-world experience of representing people who otherwise could not afford to enforce their rights under state and federal environmental laws.

Now as Louisiana’s premier public-interest environmental legal services organization, the Clinic maintains a full and wide-ranging litigation docket. On behalf of their clients, Clinic student attorneys litigate environmental “citizen suits” to abate industrial pollution, appeal permits for environmental pollution or destruction of wetlands, challenge agency regulations that fall short of legislative mandates, and prod agencies to perform statutory duties.

Tulane Law School funds approximately 65% of the Clinic’s budget, while private foundation support provides the remaining amount of money necessary to supply the high quality legal assistance our clients need. The end result is a thriving Clinic that meets both goals of the Clinic—to train effective and ethical lawyers by guiding law students through actual client representation and representing individuals, community organizations, and government bodies who could not otherwise afford competent legal help. Because 26 law students who receive credit but no compensation do most of the Clinic’s legal work, the Clinic produces tremendous results with only six paid staff members.

The Clinic contributes to the Louisiana legal community both by training strong, ethical litigators and by helping the Bar meet its obligation, under the legal profession’s rules, to ensure that access to justice is not “denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval.”

Since its inception, the Clinic has provided free legal representation and community outreach to more than 180 community organizations, lower-income individuals, and local governments throughout Louisiana. By representing clients who have historically been left out of governmental processes, the Clinic has become a powerful force for environmental reform.



Staff Attorney Chris Brown giving a presentation at the Tulane Law and Policy Conference

CASE SELECTION

To provide the best practical educational experience for its students, the Clinic generally operates at full capacity. Consistent with its “client driven” mission, the Clinic evaluates potential new matters primarily on a “first-come, first-served” basis. The Clinic represents clients on cases of legal merit and educational value when:

1. The clients are not reasonably able to obtain representation from the private bar, whether on an hourly or a contingent basis; or
2. The Clinic serves as court-appointed counsel and the Clinic’s representation is in the public interest; or
3. The client is a governmental entity and the Clinic’s representation is in the public interest.

The Clinic will not take a case unless the case has evidentiary support or is likely to have evidentiary support after investigation. The case also must be warranted by existing law or by a nonfrivolous argument for a change to or extension of existing law. Once a potential case has been screened by the Clinic staff and meets the above criteria, it then is presented to the Clinic’s Legal Advisory Board (listed below) for review. The Board reviews the prospective cases and approves or disapproves of the case by a majority vote of the members. The Clinic’s clients determine each lawsuit’s goals (providing, of course, that those goals are lawful). Then, in consultation with the clients, Clinic students and staff attorneys select the legal tactics that best advance their clients’ goals.

There is no requirement or expectation that the Board, Clinic staff, or student attorneys agree with the clients’ lawful objectives. In other words, clients select the goals of representation; then, in consultation with the clients, Clinic student attorneys and staff attorneys select the legal strategies that best advance their clients’ goals. The Clinic will not, however, knowingly accept a case that requires the Clinic to advance positions it believes to be irresponsible, or that it otherwise cannot competently advocate.

LEGAL ADVISORY BOARD

The Legal Advisory Board’s primary function is to review and approve or disapprove the Clinic’s acceptance of individual cases and to provide Clinic staff with advice on Clinic matters, e.g., issues, cases, citizen outreach, fund-raising, and publicity.

Professor Paul Barron

Professor Jane L. Johnson

Daria Burgess Diaz, Esq.
Through April 2004

Michele Merkel, Esq.

Ronald Simon, Esq.

Kristen H. Engel, Esq.

Elizabeth Teel, Esq.

Doris Falkenheiner, Esq.

Through Spring 2004

Professor Oliver A. Houck

CLIENTS

Many of the Clinic's clients have struggled for years to improve environmental protection and the quality of life for Louisiana residents. The Clinic's representation of such clients means that access to the courts becomes one of their available tools. Each client, however, remains responsible for keeping an eye on the bigger picture. In other words, the Clinic's job is to serve as a tool available to clients who struggle to protect public health, welfare, and the environment. The Clinic does not take over, or direct, the struggle. The Clinic represented the following clients, along with several individuals, during the 2003 - 2004 school year:



Ken Ford, St. Bernard Citizens for Environmental Quality President & Anne Rolfes, Louisiana Bucket Brigade Director

Alliance for Affordable Energy

Association of Community Organizations for Reform Now

Austin Civil War Round Table

Bogue Lusa Water Works

Citizens for a Clean Tangipahoa (CFACT)

Coalition to Restore Coastal Louisiana

Concerned Citizens Coalition

Concerned Citizens of Livingston Parish

Concerned Citizens of New Sarpy

Concerned Citizens of St. Helena Parish

E.B. Robinson Neighborhood Improvement Coalition

Gulf Restoration Network

Holy Cross Neighborhood Association

Lake Maurepas Society

Lake Pontchartrain Basin Foundation

Louisiana Audubon Council

Louisiana Bucket Brigade

Louisiana Environmental Action Network

Oakville Community Action Group

Sierra Club-Delta Chapter

St. Bernard Citizens for Environmental Quality

St. James Citizens for Jobs and the Environment

Save Our Wetlands

STAFF

Adam Babich, Director

Adam Babich is an associate professor at Tulane Law School. He received his J.D. from Yale Law School in 1983 and his B.A. from Dickinson College in 1977. He has served as an assistant attorney general for the Colorado Attorney General's CERCLA Litigation Section, as adjunct attorney for the Environmental Defense Fund, as partner in a Denver law firm, as editor-in-chief of the Environmental Law Institute's Environmental Law Reporter, and as a law clerk for the Colorado Supreme Court. Mr. Babich has taught as an adjunct professor at Georgetown University Law Center, American University, and the University of Denver. He has directed the Clinic since May 2000.

John Suttles, Deputy Director

John Suttles obtained his JD, *cum laude*, from Tulane Law School in 1988. Upon admission to the Louisiana Bar, he joined the New Orleans law firm of Schafer & Schafer, where he became a full partner in 1992. His principal practice areas have included personal injury, insurance, and toxic tort litigation. He enrolled in the Tulane Law School Energy and Environment LLM program in 2000 and obtained his LLM *with distinction* in May 2002. Mr. Suttles joined the Clinic staff in November 2002.

Karla Raettig, Staff Attorney

Karla Raettig spent two years at Earthjustice in Seattle before joining the Clinic staff in 2001. Before working for Earthjustice, she clerked for U.S. Magistrate Judge Janice M. Stewart in the District of Oregon. In 1997, Ms. Raettig graduated from Lewis & Clark Law School, *magna cum laude*, with an environmental certificate. She served as editor-in-chief of Lewis and Clark's environmental law journal, and as a teaching assistant for the law school's legal analysis and writing program. She is currently pursuing her Masters in Energy and Environmental Law at Tulane Law School.

Chris Brown, Staff Attorney

Before joining the Clinic, Christopher Brown was a staff attorney at the Texas Commission on Environmental Quality, where he specialized in air and water quality-related permitting and rulemaking. Before that, he served as an assistant attorney general for the Texas Attorney General's Office, a judicial clerk for the U.S. District Court for the Western District of Texas, a natural resource specialist for the Texas Senate Research Center, and a briefing attorney for the Texas court of appeal. His B.A. is from Northwestern University, where he was named to Phi Beta Kappa. After graduating from Northwestern, he was a Rotary Foundation Fellow at the Free University of Berlin, where he studied German constitutional history. He earned his J.D. and Masters in Public Affairs from the University of Texas in 1996.

Rebecca Dayries Doucet, Community Outreach Director

Rebecca Dayries Doucet was been with the Tulane Environmental Law Clinic's Community Outreach Program from 1998 and directed the program from 2000 - 2004. Mrs. Doucet has a bachelor's degree in Psychology from Loyola University and a Master of Science in Public Health, with a concentration in Environmental Policy, from Tulane University. She worked with grassroots communities for several years and environmental leaders throughout Louisiana and received awards from the City of New Orleans, the North Baton Rouge Environmental Association, and the Louisiana Environmental Action Network for her efforts.

Joyce Broden, Legal Secretary

Joyce Broden worked at the Clinic from 1993 until December 2003. Ms. Broden earned her B.A., *cum laude*, in paralegal studies from Tulane University in May 2003. Since leaving the Clinic, Ms. Broden has joined a private plaintiff's toxic tort practice as a legal assistant.

Angela James Jenkins, Legal Assistant

Angela James Jenkins joined the Clinic in April 2004 after working at Tulane Law School's Department of Continuing Legal Education (CLE). Prior to working with CLE, she was employed by Orleans Parish Juvenile Court. Mrs. Jenkins has also held internships at the office of U.S. Senator John Breaux and the Mayor's office. She earned a Bachelor of Science degree in Criminal Justice from Southern University at New Orleans.

STUDENT PRACTICE

Each year, the Clinic trains 26 third-year law students to practice environmental law. The Louisiana Supreme Court and the U.S. District Courts for the Eastern, Western, and Middle Districts of Louisiana have adopted "student practice" rules that authorize Clinic students to appear, argue, and present witnesses. This authorization is a privilege, carrying with it the responsibility to provide zealous, diligent representation that meets the highest standards of professional behavior. Clinic students are sworn to place "the interests of the client" above their "personal interests or clinic interests." The opportunities and responsibilities afforded by these court rules enhance the Clinic's ability to provide students with real-world litigation experience.



Student Attorneys, Anne Wohlfield, Megan Hey, Brian Johnson, Aylin Makalansky, and Deputy Director, John Suttles, after an oral argument in federal court.

STUDENT ATTORNEYS

Nicole Adame

Hugh Ammerman

Ashley Bass

Brianna Bond

Josh Borsellino

David Collinge

Jeremy Diamond

Stella Dorman

Christopher Garcia

Megan Hey

M. Carson Hodges

Brian Johnson

Alan Linch

Jenifer Liu

Aylin Maklansky

Tara McBrien

Korey Nelson

Olivia Orza

Alex Panio

John W. Pint

E. Barrett Ristroph

John Robert, III

Andre Shiromani

Rita ("Lainey") Trotter

Anne Wohlfield

RESEARCH ASSISTANTS

Gilbert ("Bert") Dupre

Alexander Williamson

INTERNS

Frankie Fachilla

Amanda Kuhnel

Lindsay Martin

LEGAL WORK AND ACCOMPLISHMENTS

Clean Air Initiative

On behalf of and in consultation with the Clinic's clients, the Clean Air Initiative targets toxic air pollution in Louisiana from industrial facilities, including oil refineries and chemical and petrochemical manufacturing facilities, which are overwhelmingly concentrated in low-income, minority communities throughout Louisiana. The Initiative's goals are to abate dangerous air emissions, deter industry violations of the Clean Air Act, and empower citizens to participate effectively in the permitting and enforcement process. The Clinic worked on the following clean air matters during the 2003 - 2004 school year:



Refinery near a cemetery in Chalmette, Louisiana.

Louisiana Environmental Action Network (LEAN) v. Leavitt, 04-CV-00370 (M.D. La., June 4, 2004) (Seeking to compel EPA to rule on LEAN's petition asking EPA to veto LDEQ's granting of an air permit that would allow Dow Chemical to increase emissions of volatile organic compounds in Iberville Parish, which already violates federal health protection standards for ozone pollution.)

Comments on behalf of the Austin Civil War Roundtable (ACWRT) and the Louisiana Environmental Action Network re: Dolet Hills Lignite Mine air permit application to LDEQ (Requesting that LDEQ add provisions to the permit to better protect the public from machinery emissions: submit records of total operating hours of the two largest generators, require the mine to meet the federal standard of performance for coal preparations, regulate the mine as a "major source" of particulate matter, and identify the different VOCs (volatile organic compounds) it emits.) (May 6, 2004)

Juanita Stewart & LEAN v. Michael O. Leavitt, No. 04-0137 (M.D. La., March 1, 2004) (Lawsuit to compel EPA to terminate, modify, or revoke and reissue an air permit granted by LDEQ to the Georgia-Pacific facility in Zachary, Louisiana. The current permit violates the Clean Air Act and allows Georgia-Pacific to emit excess pollution in an area that fails to meet minimum health protection standards for ozone.)

St. Bernard Citizens For Environmental Quality and Louisiana Bucket Brigade v. Chalmette Refining, L.L.C., No. 04-0398 (E.D. La., Feb. 12, 2004) (A citizen suit under the Clean Air and Emergency Planning and Community Right to Know Acts seeking civil penalties and an injunction against (1) excessive oil refinery emissions due to equipment breakdowns; (2) violations of permit limits for benzene; (3) violations of performance standards for flares; and (4) reporting violations.)

Notice of Louisiana Environmental Action Network re: EPA's Failure to Answer the Petition for Objection to LDEQ's Part 70 Permit Decisions regarding Dow Chemical Company Louisiana Operations Complex Cellulose and Light Hydrocarbons (LHC) III Plants (Notice of LEAN's intent to sue EPA under the Clean Air Act because the EPA has not answered LEAN's petition, which was filed December 27, 2003. The Act requires EPA to answer the petition within 60 days after the petition was filed.) (January 30, 2004)

Louisiana Environmental Action Network v. U.S. Environmental Protection Agency, No. 03-1041 (M.D. La., Dec. 23, 2003) (Seeking EPA revision of a regulation that allows facilities to continue to rely on inadequate flare technology despite the fact that current boilers, process heaters, and incinerators have destruction efficiencies greater than 99%.)

Petition on behalf of Stephanie Anthony and Louisiana Environmental Action Network re: ExxonMobil Refining and Supply Company (Petition to U.S. EPA for a veto of a proposed "global" air permit that would allow speculative reductions from unbuilt, potential future projects to offset current pollution increases, and, further, would allow expired and invalid reduction credits to offset significant future pollution increases in an area that has never met the minimum health protection standards for ozone.) (December 8, 2003)

Notice of St. Bernard Citizens for Environmental Quality and Louisiana Bucket Brigade re: Chalmette Refining L.L.C. (Researched and prepared a letter to notify Chalmette refinery that it has exceeded emissions limits established by the federal Clean Air Act and has violated the federal Emergency Planning and Community Right to Know Act by failing to report many of its excess emissions. The notice letter further explains that these excess emissions harm the health and well-being of Chalmette residents and provides the refinery with 60 days to negotiate with the citizens' groups and improve the refinery's practices to avoid litigation.) (December 4, 2003)

Comments on behalf of the Louisiana Environmental Action Network and Stephanie Anthony re: ExxonMobil Refining and Supply Company's "Clean Air Commitment Project" Permit, which includes Part 70 Permits for twelve facilities, a global Prevention of Significant Deterioration Permit, and a global Nonattainment New Source Review Permit (Addressing ExxonMobil's failure to identify and secure the pollution reductions required by the Clean Air Act and state law to offset proposed increases of ozone-forming pollutants in the Baton Rouge area, which has never met the minimum health protection standards for ozone pollution. Recent high levels of ozone pollution in Baton Rouge will prevent the area from meeting health protection standards at least through 2004.) (September 30, 2003)

In re: Dow Chemical Company Louisiana Operations Complex Cellulose and Light Hydrocarbons Plants, Part 70 Air Permit Major Modifications and Emission Reduction Credits, No. 2003/CA/2278 (1st Cir., Aug. 29, 2003) (On behalf of LEAN, the Clinic appealed the 19th JDC's decision to approve LDEQ's granting of Dow's air permit due to three errors in the trial court's judgment: (1) the court erred when it approved Dow's emission reductions

that were already required by law and, thus, “shall not be credited” to offset pollution increases; (2) the court erred when it found Dow could offset increases of ozone-forming pollution of over 50 tons per year based on reductions that were already required by law; and, (3) the court erred when it allowed Dow to increase ozone-forming pollution by over 25 tons per year without undergoing new source review or requiring offsetting reductions.)

Baton Rouge Ozone Bump Up: On November 22, 2002, LEAN sued EPA for approving LDEQ’s plan for achieving the Clean Air Act’s ozone health protection standard by an extended deadline. On February 25, 2003, the Court overturned EPA’s extension of Louisiana’s deadline for compliance, which caused EPA to rank the ozone problem in Baton Rouge as “severe” as of June 2003. Next, on November 24, 2003, the Court vacated EPA’s approval of LDEQ’s scheme for inter-pollutant trading (that is increasing Volatile Organic Compounds (“VOCs”) in return for Nitrogen Oxides (“NOx”) decreases). And on May 3, 2004, the Court heard arguments on the remaining issue in the case – whether EPA must require immediate emission reductions to respond to Louisiana’s failure to comply with health protection standards by the Clean Air Act’s deadlines. The Court has not yet ruled on that issue.

Orion/Valero Refinery Litigation: After a favorable settlement on behalf of the Concerned Citizens of New Sarpy (“CCNS”) of a Clean Air Act citizen enforcement suit against Orion Refining Corp in December 2002, Orion declared bankruptcy and sold its refinery to Valero Energy Corp. On July 23, 2003, the Clinic sent a letter to the Louisiana Department of Environmental Quality demanding that LDEQ incorporate Orion’s settlement obligations into Valero’s permit. On November 25, 2003, LDEQ agreed and provided the Clinic with a commitment signed by LDEQ and Valero to reopen Valero’s permit within 90 days for incorporation of settlement terms.

WATER QUALITY PROTECTION INITIATIVE

The Water Quality Protection Initiative addresses water pollution problems in Louisiana by enabling citizens to pressure the responsible government agencies to protect water resources and to enforce the Clean Water Act directly against polluters. The Water Quality Protection Initiative's goals are to reform the state water protection program, to abate harmful water discharges, and to empower citizens to participate effectively in the permitting and enforcement process. Part of this work includes serving as legal counsel on LEAN's Lower Mississippi Riverkeeper project, part of Robert F. Kennedy's national Waterkeeper Alliance. The Clinic worked on the following matters during the 2003 - 2004 school year:



Clinic attorneys, students, and clients touring the bayous of Louisiana.

The Lake Pontchartrain Basin Foundation v. Madisonville Properties Inc., d/b/a T Rivers, Inc., 04-0541 (E.D. La., Feb 25, 2004) (Citizen enforcement suit seeking injunctive relief and civil penalties under the Clean Water Act for T Rivers' failure to comply with the requirements of its water permit.)

Comments on behalf of the Louisiana Environmental Action Network, Save Our Wetlands, Louisiana Audubon Council, Gulf Restoration Network, and Rudy Mills re: LDEQ's list of impaired waters (Commenting on LDEQ's submission to EPA of the 2002 303(d) list of waters requiring a Total Maximum Daily Load, and requesting that EPA not approve the list due to its non-compliance with the Clean Water Act.) (January 20, 2004)

Supplemental notice of Lake Pontchartrain Basin Foundation re: Delta Glass Works, Inc. (Notice of intent to file a citizen suit under the Clean Water Act because it discharged more total suspended solids than its permit allows.) (November 21, 2003) As a result of the notice, the company hired a consultant to perform regularly scheduled plant maintenance, perform sampling/testing as required, and to assist it with filing its discharge monitoring reports.

Supplemental Notice of Lake Pontchartrain Basin Foundation re: Preferred Equities, Inc. (Notice of intent to file a citizen suit under the Clean Water Act for violations of the Act's requirements to maintain effluent limitations.) (October 30, 2003)

Supplemental Notice of Lake Pontchartrain Basin Foundation re: Southeastern Louisiana Water & Sewer Co., L.L.C. (Notice of intent to file a citizen suit under the Clean Water Act for violations of the Act's requirements to maintain effluent limitations.) (October 30, 2003)

Notice of Lake Pontchartrain Basin Foundation re: Pineapple Management Services, Inc. (Notice of intent to file a citizen suit under the Clean Water Act for violations of the Act's requirements to submit discharge monitoring reports.) (October 28, 2003)

Notice of Lake Pontchartrain Basin Foundation re: Madisonville Properties, Inc. d/b/a T Rivers, Inc. (Notice of intent to file a citizen suit under the Clean Water Act for violations of the Act's requirements to submit discharge monitoring reports.) (October 28, 2003)

Notice of Lake Pontchartrain Basin Foundation re: Delta Glass Works, Inc. (Notice of intent to file a citizen suit under the Clean Water Act for violations of the Act's requirements to submit discharge monitoring reports.) (October 28, 2003)

Notice of Lake Pontchartrain Basin Foundation re: TI, Inc. d/b/a Titan Industries, Inc. (Notice of intent to file a citizen suit under the Clean Water Act for violations of the Act's requirements to maintain effluent limitations and to submit discharge monitoring reports.) (October 28, 2003)

Notice of Lake Pontchartrain Basin Foundation re: Preferred Equities, Inc. (Notice of intent to file a citizen suit under the Clean Water Act for violations of the Act's requirements to maintain effluent limitations and to submit discharge monitoring reports.) (October 14, 2003)

Notice of Lake Pontchartrain Basin Foundation re: Southeastern Louisiana Water & Sewer Co., L.L.C. (Notice of intent to file a citizen suit under the Clean Water Act for violations of the Act's requirements to maintain effluent limitations and to submit discharge monitoring reports.) (October 14, 2003)

Louisiana Environmental Action Network v. CII Carbon, L.L.C., No. 03-1626 (E.D. La., June 6, 2003) (Clean Water Act citizen enforcement suit seeking declaratory and injunctive relief and civil penalties for the calcined coke facility's excessive discharges of pollution into the Mississippi River.) After the Clinic filed suit, the Louisiana Department of Environmental Quality commenced an enforcement action and levied civil penalties. The Clinic recently reached a settlement by which CII Carbon will contribute an additional sum to assist environmental groups' efforts to preserve and restore coastal Louisiana.

LEAN v. Daybrook Fisheries, No. 03-1627 (E.D. La., June 6, 2003) (Seeking declaratory and injunctive relief, civil penalties and other appropriate relief from Daybrook Fisheries' documented and unresolved violations of the Clean Water Act, including excess discharges of substances that contain or affect Total Suspended Solids and Biological Oxygen Demand.) The trial is scheduled for November 15, 2004.

LEAN v. T.T. Coatings, Inc., No. 03-1628 (E.D. La., June 6, 2003) (Seeking declaratory and injunctive relief, civil penalties and other appropriate relief from T.T. Coatings' documented

and unresolved violations of the Clean Water Act, including excess discharges of Total Purgeable Halocarbons.) The court will hear the case February 14, 2005.

Petition to withdraw the water permitting and enforcement program from LDEQ. The Clinic filed a petition in October 2001, on behalf of several community and environmental groups. It asked EPA to withdraw Louisiana's authority to administer the water permitting and enforcement program because of several documented deficiencies. That petition resulted in significant federal oversight of Louisiana's program, including EPA Headquarters issuing a "demand letter" to LDEQ outlining specific performance measures the agency had to meet or face withdrawal of its authority and the placement of three EPA employees in LDEQ's permitting and enforcement divisions to assist the agency in meeting the required "performance measures." The performance measures address LDEQ's:

- ◆ Permit backlog
- ◆ Public access to files
- ◆ Enforcement penalty rule
- ◆ Beneficial Environmental Projects
- ◆ Enforcement action policy
- ◆ Program authorization documents
- ◆ Enforcement penalties assessed against municipalities

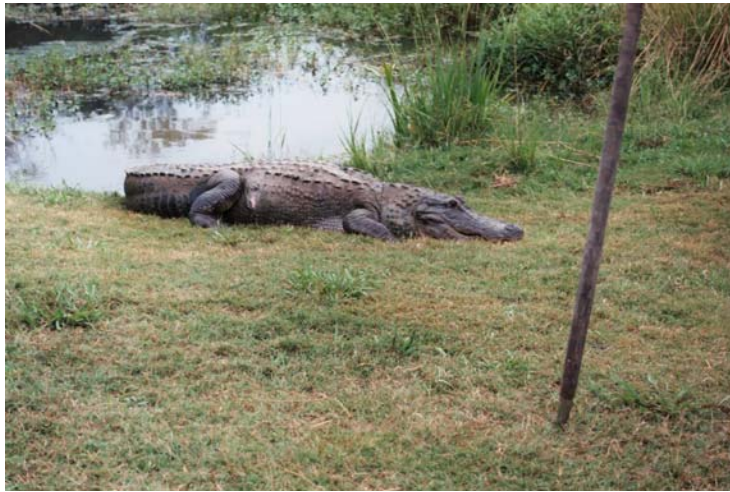
On May 12, 2004, EPA announced in the newspaper that LDEQ has satisfactorily met the performance measure requirements and will retain its authority over the water permitting and enforcement program. EPA must publish its decision in the Federal Register and accept public comments before finalizing its decision.

Comments on behalf of Louisiana Environmental Action Network, Lake Pontchartrain Basin Foundation, Coalition to Restore Coastal Louisiana, Gulf Restoration Network, and Sierra Club, New Orleans Group re: EPA Region 6's proposed plan to streamline oversight of state water programs (Requesting that EPA increase its oversight of states with poor water protection programs, such as Louisiana, instead of decreasing it.) (February 18, 2003) In August 2003, EPA issued the streamlining proposal, incorporating some of the suggestions offered in the comments.

Rudy Mills, Louisiana Audubon Council, and Sierra Club v. Louisiana Department of Environmental Quality, No. 486412J (19th Jud. Dist. Aug. 1, 2001) (Challenging LDEQ's issuance of a water quality certification to Hancock County Port and Harbor Commission to dredge mercury contaminated sediments in Little Lake.) On June 16, 2004, the Clinic settled this case. The Commission has agreed not to conduct any further dredging under the current permits.

ENDANGERED WETLANDS INITIATIVE

Wetland loss in coastal Louisiana has reached catastrophic proportions, with current losses of 25-35 square miles per year. The disappearance of Louisiana's wetlands threatens the productivity of its coastal ecosystems, the economic viability of its industries, and the safety of its residents. The Endangered Wetlands Initiative uses client-directed administrative comments, litigation, and outreach to enhance citizen efforts to protect and restore wetlands from harmful projects and to empower citizens to effectively participate in wetlands permitting, regulation, and enforcement. On behalf of its clients, the Clinic worked on the following matters within its Endangered Wetlands Initiative during the 2003 - 2004 school year:



Alligator Bayou, Gonzales, Louisiana

Comments on behalf of Louisiana Audubon Council and Gulf Restoration Network re: a 2.7-mile segment of the Morganza to the Gulf Hurricane Protection Levee (Objecting to the issuance of this project until the Corps issues a Record of Decision or Statement of Findings for the programmatic Environmental Impact Statement on the entire levee protection project, and an adequate environmental assessment has been conducted for the 2.7-mile segment.) (December 8, 2003)

Comments on behalf of Louisiana Audubon Council, Inc. and Sierra Club-Delta Chapter re: Levee Refurbishment near Crown Point, Louisiana (Requesting that the U.S. Army Corps of Engineers prepare a comprehensive Environmental Impact Statement examining the environmental effects resulting from a proposed ring levee around Crown Point in Jefferson Parish.) (October 30, 2003)

Comments on behalf of Louisiana Audubon Council, Inc. and Sierra Club-Delta Chapter re: Levee Refurbishment near Crown Point, Louisiana (Requesting that LDEQ deny a water quality certification for levee refurbishment because of potential impacts on water quality in Jean Lafitte National Historical Park.) (October 30, 2003)

Loretto O'Reilly, Hazel Sinclair, and Kelly Fitzmaurice v. Louisiana Department of Environmental Quality, No. 509564 (19th Jud. Dist., July 9, 2003) (Challenging LDEQ's issuance of a water quality certification for a proposed subdivision that would destroy 85

acres of forest of which 39.5 acres are wetlands in St. Tammany Parish and negatively impact the water quality of the Little Tchefuncte River and Timber Branch Creek.) In February 2004, the Court rejected the agency's procedures for issuing the water quality certification because of its failure to assess environmental impacts. This is an important case because the certification process at issue is Louisiana's best mechanism for slowing destruction of its valuable wetlands.

COMMUNITY PRESERVATION PROGRAM

The Community Preservation Program, on behalf of environmental and community groups, helps Louisiana's residents defend their communities and environment against damage from poorly planned development. At issue are land use decisions, environmental justice, historic preservation, hazardous waste disposal, and sprawl that threaten the historic value, cultural fabric, and environmental integrity of communities. The Clinic's current Community Preservation docket includes cases that (1) strive to empower citizens to gain greater control over decision-making in their community and (2) seek to preserve the unique character of Louisiana communities. On behalf of citizens and community organizations, the Clinic has represented communities in the following matters:



Student Attorneys, Jenifer Liu, Stella Dorman, and Nicole Adame, touring a landfill.

Petition on behalf of Louisiana Environmental Action Network, Jeanette Tate, and the Austin Civil War Roundtable (Requesting that the Louisiana Department of Natural Resources declare the Mansfield Battlefield unsuitable for strip mining because current mining practices threaten the historical significance of the Civil War Battlefield.) (April 19, 2004)

O'Neil Couvillion, Harold Wayne Breaud, Louisiana Environmental Action Network, and Concerned Citizens of Livingston Parish v. Louisiana Department of Environmental Quality, No. 504269 (19th J.D.C., Feb. 20, 2004) (Petition challenging LDEQ's issuance of a solid waste permit application that will increase the waste disposal capacity and laterally expand Woodside Landfill.)

Oakville Community Action Group, Glynn Mayfield, & Louisiana Environmental Action Network v. Louisiana Department of Environmental Quality, No. 517017 (19th Jud. Dist., Feb. 9, 2004) (Petition challenging LDEQ's issuance of solid waste processing and disposal permits to a landfill owner and operator on the grounds that: (1) LDEQ did not properly perform the required environmental assessment; (2) the site is not properly zoned for use as

a landfill or waste processing facility; (3) LDEQ's interpretation of its solid waste regulations to allow processing of industrial and household waste as close as 50 feet from the Oakville community is arbitrary and capricious; and, (4) LDEQ's decision is not supported by the record.)

Oakville Community Action Group v. Plaquemines Parish Council, No. 50-697 (25th Jud. Dist., La. Dec. 15, 2003) (Challenging Plaquemines Parish Council approval of a plan to destroy more than 8 acres of unique bottomland hardwood wetlands for Industrial Pipe's solid waste landfill expansion.)

Comments on behalf of Oakville Community Action Group and Louisiana Environmental Action Network re: Industrial Pipe permit renewals (Submitted oral and written comments on LDEQ's proposed approval of Industrial Pipe's permit renewals for the solid waste landfill and waste processing plant despite its ongoing violations.) (December 19, 2003 and December 22, 2003)

George Washington, Concerned Citizens of St. Helena Parish, and Louisiana Environmental Action Network v. St. Helena Parish Police Jury, No. 18370 (21st Jud. Dist. La., Nov. 7, 2003) (Seeking to have a 50-year contract for a landfill set aside as outside the powers of the police jury and for violations of the Open Meetings Law.)

Faith Farlough and E.B. Robinson Neighborhood Improvement Coalition v. Roussel Welding & Metal Works, Inc., No. 47868 (40th Jud. Dist., La. Oct. 22, 2003) (Seeking declaratory and injunctive relief against the operation of a welding shop in a residentially zoned neighborhood that is both a nuisance at law and a nuisance in fact.)

Holy Cross Neighborhood Association, Louisiana Environmental Action Network, and Gulf Restoration Network v. U.S. Army Corps of Engineers, No. 03-0370 (E.D. La., Feb. 6, 2003) (Seeking abatement under the Resource Conservation and Recovery Act of the Corps plans to dredge contaminated sediments in the Inner Harbor Navigational Canal and seeking a supplemental environmental impact statement under the National Environmental Policy Act to analyze the effects of dredging and disposal of dredged contaminants.) The government filed a motion to dismiss the RCRA case and the court heard oral argument on the motion to dismiss on October 15, 2003. The student attorney successfully defeated that motion and the court decided on November 4, 2003, that the Resource Conservation and Recovery Act does apply to Corps' dredging projects. The trial is scheduled on October 4, 2004.

Concerned Citizens Coalition v. Federal Highway Administration, No. 03-292-A-M2 (M.D. La, Apr. 16, 2003) (Seeking to stop construction of an elevated highway running through the heart of Lafayette's historic district because the Highway Administration violated the National Environmental Policy Act, the National Historic Preservation Act, and section 4(f) of the Department of Transportation Act.) In November 2003, the Clinic moved for summary judgment on standing and liability. The Federal Highway Administration also moved for summary judgment. The judge toured the impacted area in May and should make a decision this summer.

Oakville Community Action Group & Louisiana Environmental Action Network v. Industrial Pipe, Inc., No. 02-1258 (E.D. La., April 29, 2002) (Resource Conservation and Recovery Act and Louisiana Environmental Quality Act citizen enforcement suit seeking compliance with financial assurance and buffer zone requirements and an award of civil penalties, payable to the U.S. Treasury.) The Clinic won a ruling in federal court for the Eastern District of Louisiana finding that the Oakville Community Action Group and the Louisiana Environmental Action

Network had standing to prosecute Resource Conservation and Recovery Act and state solid waste law claims against Industrial Pipe. Clinic students under the direction of a supervising attorney completed a trial on the merits in federal district court on April 5, 2004. The case is under consideration by the Court following post-trial briefing.

SPEAKING ENGAGEMENTS, OUTREACH, AND PUBLICATIONS

- ◆ August/September 2003—"Environmental Justice in Louisiana" by Adam Babich, the Clinic director, featured in the *Louisiana Bar Journal* Vol. 51, No. 2.
- ◆ August 4, 2003—Delivered a presentation on environmental justice in Louisiana at a Loyola University environmental studies class.
- ◆ August 7, 2003—Participated in a meeting with Sam Coleman, Director of EPA's Region 6 Compliance Assurance and Enforcement Division, hosted by the Louisiana Environmental Action Network, regarding environmental issues facing Louisiana.
- ◆ August 11, 2003—Participated in a media briefing with a *Times-Picayune* reporter, organized by the League of Women Voters, that resulted in a story about the Industrial Canal case.



Economist Paul Templet and intern Lindsay Martin at a Lower Mississippi Riverkeeper Advisory Meeting

- ◆ August 12, 2003, March 4, 2004, and April 8, 2004—Facilitated LEAN's Riverkeeper Advisory Board's planning meetings. The community outreach program prepared the agenda, recorded minutes, and offered strategic program planning and fundraising advice. The Clinic also serves as counsel on the Riverkeeper's Clean Water Act enforcement cases.
- ◆ August 25, 2003—Met with international visitors from the head of the Department of Natural Resources and Environmental Protection of the Pavlodar Region, the head of the Analysis Section of the Department of State Ecological Analysis, Ministry of Natural Resources and Environmental Protection, and the head of the Almaty Region Department of Environmental Protection from Kazakhstan to discuss air and water pollution issues in Louisiana and the Clinic's role in the environmental community.
- ◆ September 8, October 29, and November 11, 2003; January 15, March 16, and April 27, 2004—Coordinated wetlands strategy meetings with a network of clients working on wetlands protection and coastal restoration. The outreach program coordinates the strategy meetings, creates the agenda and records minutes, and follows up on action items.
- ◆ September 9 and October 8, 2003—Attended community strategy meetings with the Holy Cross Neighborhood Association and other groups regarding the Industrial Canal expansion and lawsuit. The outreach program assisted Holy Cross and the Gulf Restoration Network with three grant applications to the McKnight Foundation, the Environmental Support Center, and the National Wildlife Federation to support their efforts.

- ◆ September 11 and 12, 2003—Moderated the Society of Environmental Journalists (“SEJ”) Network Lunch discussion, “Nuts & Bolts of Environmental Justice: Following Details without Losing the Issue” and spoke on the “toxic tour” of New Sarpy, La., where the Clinic represented the Concerned Citizens of New Sarpy against Orion Refinery.
- ◆ September 12, and October 8, 2003, and January 23, 2004—Met with the Lake Pontchartrain Basin Foundation to discuss its water enforcement initiative on the Tchefuncte River.
- ◆ September 19, 2003—Participated in and provided meeting logistics for a planning meeting with the National Land Trust Alliance, coordinated by the Lake Pontchartrain Basin Foundation.
- ◆ September 19, 2003—Attended the Mayor’s Environmental Breakfast to discuss the City of New Orleans’ environmental agenda and to meet the new Director of Environmental Affairs.
- ◆ September 19, 2003 and February 17, 2004—Facilitated air strategy meetings with the Louisiana Environmental Action Network’s board members and staff. The meetings focused on LEAN’s Clean Air Act cases and related issues.
- ◆ September 26, 2003—Assisted LEAN in coordinating a tour of LDEQ’s new headquarters building, which allowed the Clinic staff, students and clients to meet the new Secretary of LDEQ and other upper-level management personnel of the agency.
- ◆ October 1, 2003—Participated in the community planning meeting for the Tulane Environmental Law and Policy Conference. Informed clients about the meeting and provided ideas for panel discussions and speakers.
- ◆ October 10, 2003—Clinic and clients (Gulf Restoration Network and Louisiana Audubon Council) met with a scientist from the University of New Orleans about the Morganza levee project.
- ◆ October 10-12, 2003—Attended the American Bar Association Environment Conference.
- ◆ October 17, 2003—Facilitated a meeting with residents of Slaughter, La., the Lake Pontchartrain Basin Foundation, and the town mayor in an attempt to resolve issues with sewage runoff.
- ◆ October 23, 2003—Co-sponsored the “Southern Forests: Survival and



Southern Forests Conference at Tulane

Sustainability” conference with the Mississippi River Basin Alliance, U.S. Public Interest Research Group, the Tulane Green Club, and others. More than 80 people attended the conference.

- ◆ October 27, 2003—Prepared and distributed a press release announcing that EPA had asked the court to vacate Louisiana’s Ozone Plan in the Louisiana Environmental Action Network’s lawsuit. The case received media coverage in the *Bureau of National Affairs*, the front page of the *Times-Picayune*, *New Orleans CityBusiness*, and the *Baton Rouge Advocate*.
- ◆ October 29, 2003—Facilitated and attended a meeting with the Department of Health and Hospitals regarding the Slaughter sewage problem.
- ◆ October 30, 2003—Co-coordinated and participated in the Institute for Conservation Leadership’s “Campaign and Coalition Building” workshop held at Tulane.
- ◆ Fall 2003—“Dual Realities at the Environmental Law Clinic” by Adam Babich, Clinic director, published in the *Tulane Environmental Law News* Vol. 9, Issue 1.
- ◆ November 5, 2003—Prepared and distributed a press release announcing the court ruling that RCRA applies to Corps dredging projects in the Industrial Canal case. The effort resulted in favorable media coverage on the front page of the *Times-Picayune* and in other media outlets.
- ◆ November 6, 2003—Discussed environmental justice during an Environment and Society class at Loyola University.
- ◆ November 6, 2003—Attended a meeting in Convent, La., with various government agencies and community groups. Provided an update on the sewage sludge comments the Clinic submitted in March 2003.
- ◆ November 9, 2003—Delivered a presentation on the Clean Air Act and the Administration’s proposed changes to it at a Sierra Club-New Orleans Chapter meeting.
- ◆ November 13, 2003—Spoke about environmental justice in Louisiana in a Social Justice class at Loyola University.
- ◆ November 14, 2003—Presented “Legal Initiatives of the Tulane Environmental Law Clinic for 2004” at the Section on Environmental Law of the Louisiana Bar Association seminar on “Environmental Law in Louisiana.”
- ◆ November 17, 2003—Met with a visiting reporter from the Beijing Office of the *21st Century Business Herald* in China to discuss the Clinic and environmental issues in New Orleans.
- ◆ November 21, 2003—Attended the Mayor’s Environmental Breakfast about the Louisiana Coastal Assessment process.

- ◆ November 24, 2003—Participated in a conference call with the Louisiana Bucket Brigade, the St. Bernard Citizens for Environmental Quality, and the Refinery Reform Network to discuss the upcoming legal actions and press event.
- ◆ December 3, 2003, January 27, 2004, and March 24, 2004—Participated in conference calls with several clients to discuss the upcoming media event and legal action to preserve a Civil War battlefield.
- ◆ December 4, 2003—Co-coordinated a press conference with the Louisiana Bucket Brigade, and prepared and distributed the press release announcing the filing of a notice of violation letter to Chalmette Refining. The announcement received good media coverage from the *Associated Press*, the *Times-Picayune*, WDSU Channel 6, the local Chalmette paper and others.



Chalmette Press Conference

- ◆ December 9, 2003—Co-sponsored, with Responsible Wealth and United for a Fair Tax Economy, a private reception, book signing, and public lecture by Bill Gates Sr. and Chuck Collins titled, “America’s Wealth Gap and the Case for Preserving the Estate Tax.” Between 150 and 200 people attended the event, which received extensive media coverage throughout state.
- ◆ January 9, 2004—Met with EPA, LDEQ representatives, and LEAN about the LDEQ’s progress in meeting the performance measures outlined by EPA for the agency to retain its water enforcement and permitting program.
- ◆ January 14, 2004—Attended the LSU Law Center Roundtable Discussion about the Louisiana Supreme Court’s decision in *Corbello v. Iowa Production*, which required an oil company to pay damages for injury to leased land.
- ◆ January 22, 2004—Met with International Visitors from Argentina, Lebanon, India, the Philippines, and South Africa regarding sustainable development and environmental protection.
- ◆ January 22, 2004—Delivered a presentation about the Clinic and its role in the environmental community at an Air and Waste Management Association Meeting.
- ◆ January 27, 2004—Met with the Alliance for Affordable Energy about the Clinic’s case selection process and its role in the environmental community.

- ◆ February 19, 2004—Presented an environmental justice lecture during a Xavier University class.
- ◆ February 25 and February 27, 2004—Participated in the EPA NEJAC Ad Hoc Community Outreach Advisory conference calls: provided EPA with contact information for local community groups that should be invited to the NEJAC Advisory meeting and receive the draft report. Posted information about the meeting, including links to the meeting web site and the draft report, on the Clinic’s web page.
- ◆ March 3, 2004—Met with potential Atchafalaya Basin Waterkeeper project leader about starting a Waterkeeper program in the Basin and about the Clinic’s legal services.
- ◆ March 4-7, 2004—Attended the University of Oregon’s 22nd Public Interest Environmental Law Conference. Karla Raettig was a featured speaker on the panel, “A National Crisis: The Disappearing Louisiana Coast.”
- ◆ March 8, 2004—Assisted in planning Tulane Law School’s McGlinchey Lecture. Richard Lazarus, professor at Georgetown University Law School, delivered a speech entitled, “Judging Environmental Law.”
- ◆ March 10, 2004—Participated in a conference call with EPA and Louisiana Environmental Action Network staff about the water petition.
- ◆ April 1, 2004—Three student attorneys and the clinic director toured the Woodside Waste Management landfill in Walker, La.
- ◆ April 2-3, 2004—Clinic staff participated in the 9th Annual Tulane Environmental Law and Policy Conference. Chris Brown, staff attorney, presented information on the proposed changes to the Clean Air Act on the “Federal Update” panel.
- ◆ April 19, 2004—Distributed a media advisory and press release, and coordinated the press conference at the old Governor’s Mansion announcing the Louisiana Environmental Action Network and the Austin Civil War Roundtable’s legal efforts to protect the Mansfield Battlefield. The event received significant media coverage in newspapers and TV stations throughout Louisiana.
- ◆ April 23, 2004—Speaker at Loyola’s GAIA (Earth) Fest.



Press Conference about Mansfield Battlefield at Old Governor’s Mansion.

- ◆ April 24, 2004—Toured the Atchafalaya Basin-Buffalo Cove area by boat to learn about challenges facing the area.
- ◆ April 27, 2004—Attended a meeting with the Secretary of Culture, Recreation, and Tourism and LEAN to discuss the current threats to the historic Mansfield Battlefield and ways to protect it.
- ◆ May 14, 2004—Hosted a group of undergraduate students from Bluffton College in Ohio. Presented information about the Clinic and environmental justice in Louisiana.
- ◆ May/June 2004—“The Violator-Pays Rule” by Adam Babich, published in the Environmental Law Institute’s *Environmental Forum*, Vol. 21, No. 3.
- ◆ Spring/Summer 2004—“The Apolitical Clinic” by Adam Babich, published in the Faculty Notebook section of the *Tulane Lawyer*.
- ◆ Finalized the Clinic’s first “Client Rights and Responsibilities” document outlining what a client should expect from the Clinic and what the clients are responsible for during their representation.

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