



**Tulane
Environmental
Law
Clinic**

**2011 - 2012
2012 - 2013
Annual Reports**

January 13, 2014

Dear Colleagues:

This is a double issue of our annual report, covering two full academic years, Fall 2011 through Spring 2012, and Fall 2012 through Spring 2013. This message begins our report with a summary of one of the Tulane Environmental Law Clinic's recent cases, which illustrates some of the challenges that the Clinic's student attorneys face in representing real clients in lawsuits.

First, the upshot: On March 19, 2013, a federal court in Louisiana issued a consent decree that should help mitigate an environmental injustice. The decree requires relocation of residents away from a predominately lower-income African-American Baton Rouge neighborhood inundated with foul odors and sewer flies from an adjacent sewage treatment plant.

Here is the background: Baton Rouge began operating its North Wastewater Treatment Plant in 1960. Large-scale expansion of the plant in the 1990s included replacing a neighborhood park with large tanks containing "trickling filters." Residents of the community neighboring the plant filed a state court lawsuit in 1996, without the Clinic's involvement. But in 2010, a Louisiana appellate court ruled that odors which were present by 1995 were not actionable and that EPA had mandated the sewage plant's expansion. Indeed, the plant had been under EPA supervision since 1988. As of 2010, EPA's latest consent decree set a 2015 deadline for Baton Rouge to comply with Clean Water Act standards. By then, residents of the surrounding community would have been living in foul odors and sewer flies for more than two decades. Further, Baton Rouge had failed to meet the consent decree's interim deadlines and EPA had not collected any of the stipulated penalties that the decree provided for such violations.

In 2010, the Louisiana Environmental Action Network (LEAN)—working with a neighborhood group called Concerned Citizens of University Place Subdivision—filed a Clean Water Act citizen enforcement suit against Baton Rouge. Student attorneys Jaimie Tuchman, Devin Barnett, and Melissa Marsh prepared LEAN's case for federal court. EPA—which was not named in the lawsuit—responded with a letter copied to Baton Rouge. It stated, "EPA has determined that ... the Claims for Relief alleged in the Citizen Suit are barred under the Clean Water Act." A few days later, however, EPA wrote to withdraw its determination, explaining that it had no authority "to determine the standing of a citizen action." Next, the U.S. Justice Department followed up with still another letter to assert that EPA had "not reversed itself on the legal position" of the first letter! Apparently, there was disagreement within the government about the value of citizen participation in the effort to bring the plant into compliance.

Attaching the first and third of the government's letters, Baton Rouge moved to dismiss LEAN's lawsuit. Despite a strong presentation at the motion hearing by student-attorney Carol Hand, the trial court dismissed LEAN's case on May 16, 2011, encouraging affected residents "to take up the matter ... with the EPA."

LEAN appealed. After oral argument by student attorney Kirk Tracy, the U.S. Court of Appeals for the Fifth Circuit issued an April 17, 2012, opinion that set national precedent by determining that the Clean Water Act's preclusion of citizen enforcement when EPA is "diligently prosecuting" a lawsuit does not limit the federal courts' jurisdiction. Instead, courts retain authority to supervise a fact-finding process about whether EPA's enforcement qualifies as diligent. Based on LEAN's argument that EPA was not diligently enforcing its most recent consent decree, the Fifth Circuit reversed the trial court's order of dismissal and reinstated the lawsuit. During these proceedings, of course, the sewage plant's neighbors

continued to breathe the plant's foul odors and sewer flies continued to inundate their homes.

Meanwhile, EPA proposed to extend deadlines in its consent decree until 2018, to give Baton Rouge three additional years to meet Clean Water Act standards. LEAN and the Concerned Citizens opposed the extension in comments that student attorney Kate Alexander prepared, and moved to intervene in the consent decree process. The U.S. Justice Department asked the court to deny intervention, arguing that residents living with offensive odors and sewer flies "lack an interest sufficient to support intervention as of right."

During this period, the federal government rebuffed the Clinic's efforts to negotiate, explaining that it did not anticipate "discussion items at this time." In an effort to ensure that upper-level government officials understood what was going on, the Clinic turned to media outlets. In this context, Inside Washington Publishers quoted the explanation from "a source" that, "The agency of course in general says environmental justice is one of its top priorities but then case-by-case the answer tends to be, 'That's really not our problem.' [We hope] that by filing the intervention we get someone's attention at EPA."

In June 2012, the U.S. Justice Department convened negotiations with EPA, Baton Rouge, the State of Louisiana, and the Clinic on behalf of LEAN and the Concerned Citizens. With the help of law student Lauren Kasperek and student attorney Rick Eisenstat, the parties ultimately achieved a settlement. For their part of the deal, LEAN and the Concerned Citizens dropped their intervention in the consent decree process and did not oppose EPA's extension of Baton Rouge's compliance deadlines. In return, Baton Rouge agreed to a court order under which it must create a buffer around the sewage plant by relocating more than 40 households from the neighboring community. Baton Rouge agreed to pay fair market value for affected homes and to disregard any reduction in that value caused by the sewage plant. The consent decree also requires Baton Rouge to follow the federal Uniform Relocation Act, including requirements to pay moving expenses, and make additional payments when necessary to get displaced residents into decent, safe, and sanitary homes.

None of this, of course, compensates the sewage plant's neighbors for decades of breathing offensive fumes and living with sewer flies. Further, the plant presumably will continue to violate the Clean Water Act for several more years. Settlement and compromise, however, emphasize the achievable over the ideal. And, for the Tulane Environmental Law Clinic, it is a victory whenever our student attorneys manage to help ordinary people make their voices heard in the legal system.

Very truly yours,



Adam Babich

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.

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."



For more information on the Clinic, see www.tulane.edu/~telc/ or http://en.wikipedia.org/wiki/Tulane_Environmental_Law_Clinic.

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 matters, e.g., issues, cases, citizen outreach, fundraising, and publicity.

Professor Paul Barron

Professor Maxine Lipeles

Professor Kirsten H. Engel

Michele Merkel, Esq.

James M. Hecker, Esq.

Karla Raettig, Esq.

Professor Jane L. Johnson

Ronald Simon, Esq.



Adam Babich, Director

Adam Babich is a professor of law 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.

**Lisa Jordan, Deputy Director**

Lisa Jordan, a New Orleans native, originally came to the Clinic in its early years as a student attorney from 1990-1991. She received her LL.M. in environmental law, with distinction, from Tulane in 1991. She went on to serve as a prosecutor in the Orleans Parish District Attorney's Office, where she eventually became a member of the office's Violent Offender Strike Force. In 1996, she returned to the Clinic, this time as a Supervising Attorney. Lisa left in 1998, but returned in July 1999 to serve as Acting Director of the Clinic for the 1999/2000 academic year. She returned to the Clinic in the Fall of 2006 as a Supervising Attorney. Lisa retains an interest in trial education, having taught in Tulane's Trial Advocacy Program, as well as the NITA program, and having served as a coach for Tulane ATLA trial teams.

Corinne Van Dalen, Staff Attorney

Corinne Van Dalen graduated from the University of Florida Law School in 1990. Ms. Van Dalen started her legal career in New Orleans working as in-house counsel for ACORN, representing its associated organizations in litigation involving the Fair Housing Act and FCC regulations. In 1992, she went to Washington, D.C. to work as a legislative specialist for an organization that represents states' interests and develops positions and recommendations regarding the Clean Water Act, the Coastal Zone Management Act and other federal environmental laws. She also worked as a legislative specialist for a private law firm providing regulatory counseling to clients on various environmental laws. Returning to litigation, she spent five years at a large Washington, D.C.-based firm working on complex product liability cases. In 2001, Ms. Van Dalen took a position with a firm that brought her back to New Orleans. She continued to litigate, working on environmental insurance coverage disputes and complex hazardous waste claims. She joined the legal staff of the Clinic in January 2005.

Elizabeth Livingston de Calderón, Staff Attorney

Elizabeth Livingston de Calderón started her career in private practice, first with Winthrop, Stimson, Putnam & Roberts in New York City and then with Pepper Hamilton in Detroit, Michigan. She moved to New Orleans in 2002 to teach Legal Research & Writing at Tulane Law School, and directed Tulane Law School's international graduate legal studies program from 2004 to 2006. Ms. Calderón earned her J.D. *magna cum laude* from Tulane Law School, where she was a member of the Tulane Law Review. She also earned an M.A. in classical languages from Tulane University and a B.A. from Connecticut College. She joined the clinic in May 2006.

Machelle Lee Hall, Staff Attorney

Machelle Lee Hall received her JD from Tulane University Law School where she was the Editor in Chief of the Tulane Environmental Law Journal, her MA from Central European University, and her BA from Hamline University. Ms. Hall worked at F. Gerald Maples, PA in New Orleans for 4 years, where she represented clients in the Comer global warming, Miss. River Gulf Outlet takings, Murphy oil spill, CAPECO oil facility explosion, and various toxic tort, commercial litigation and other cases. Before becoming an attorney, Ms. Hall was a consulting archaeologist performing cultural resource and environmental compliance for highway, pipeline, commercial construction, superfund and other development and mitigation projects in the Upper Midwest and Gulf Coast states. Ms. Hall also volunteers for the New Orleans Citizen Diplomacy Council, New Orleans Association for Women Attorneys, Louisiana SPCA, and Linda Bruneau Regional Breast Cancer Association.



Geri Robinson Davis, Community Outreach Director

Geri Robinson Davis began her career as an Environmental Resources Specialist with the United States Army Corps of Engineers, New Orleans District, where she served from 1999-2006. During her tenure with the federal government, Geri was responsible for coordinating environmental compliance for the preservation of environmental, fish and wildlife, and wetland resources. In 2005, she earned the degree of Juris Doctor from Loyola University New Orleans College of Law, where she was granted the academic distinctions of membership on Moot Court Staff and the Loyola University New Orleans Journal of Public Interest Law. From 2006-2012, Geri served as a judicial law clerk at the Fourth Circuit Court of Appeal, State of Louisiana. Geri has also earned a B.S. in biology from Dillard University, a master's degree in public health (M.P.H.) from Tulane University, and certification in Mediation, International Negotiation and Dispute Resolution from Humboldt University School of Law in Berlin, Germany. She joined the staff of the clinic as Community Outreach Director in 2012.

Linda Swanner, Legal Assistant

Linda Swanner joined the Clinic in April 2006 as the Clinic's legal assistant and webmaster. Ms. Swanner previously worked in the Office of Academic Services at Tulane Law School. Her move was prompted by her interests in environmental and environmental justice issues. She provides administrative and clerical support to faculty, clinical staff, and student attorneys.

Each year, the Clinic trains up to 26 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.

FALL '11 STUDENT ATTORNEYS

Kevin Blodgett
Jonathan Cardosi
Matthew Cardosi
Callie Casstevens
Zachary Christiansen
Christopher Dalbom
Chester Fields



Samuel Ford
Lauren Hudson
Brittany Kendig
Jessica Kersey
Abigail Legge
Jeremy Liem
Melanie Mariotti
Charles Marts
Andrea McCreary
Andrew Miner
Sara Nau
Paul Riermaier

Ashton Rogers
Wesley Rosenfeld
Brian Schaps
Rachel Simes
Lakesha Smith
Matthew Stone
Kirk Tracy

SPRING '12 STUDENT ATTORNEYS

Georgia Ainsworth
Laura Alexander
Kevin Blodgett
Matthew Cardosi
Jonathan Cardosi



Jessica Kersey
Abigail Legge
Melanie Mariotti
Charles Marts
Andrea McCreary
Andrew Miner
Rose Murray
Sara Nau
Ashton Rogers
Wesley Rosenfeld
Emily Russell
Brian Schaps
Rachel Simes
Lakesha Smith
Kirk Tracy

Zachary Christiansen
Christopher Dalbom
Chester Fields
Samuel Ford
Laura Gongaware
Lauren Hudson



SUMMER RESEARCH ASSISTANTS

Morgan Embleton
Gibson Tyler
Daniel Quandt
Lauren Kasperek
Sandra Trahan

FALL '12 STUDENT ATTORNEYS

Georgia Ainsworth
Heather Allen
Jana Anandarangam
Frederic Augonnet
Rachel Bleshman
Catherine Cordes
Shannon Derksen
Fredric Eisenstat
Laura Gongaware
William Harrison
Anne Lemelin
Ashley McDonald

Nicole Mers
Trent Moss
Michelle Munoz-Machen
Jennifer Netherton
Steven Rothermel
Katherine Shulman
Joseph Spivey
Fanya Veksler
Jonathan Volinski
Harry Vorhoff
Richard Walker

SPRING '13 STUDENT ATTORNEYS

Heather Allen
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Shannon Derksen
Morgan Embleton
Samantha Gurrentz
Anna Klemmer
Brett Korte
Anne Lemelin
Samantha Marrone
Lauren Matthews
Nicole Mers
John Mickley
Trent Moss
Jennifer Netherton
Adam Pearse
Steven Rothermel
Katherine Shulman
Joseph Spivey
Jared Sternberg
Orie Tasaka-Jupp
Christopher Valletta
Fanya Veksler
Jonathan Volinski
Harry Vorhoff
Richard Walker

STUDENT ATTORNEYS



Fall 2011



Spring 2012



Fall 2012*

To see each class photo from the past 20 years of the Clinic at our website, please go to www.tulane.edu/~telc and click "Class Pictures" in the left-hand column. *Spring 2013 not photographed.

Hurricane Debris Landfill Case Settled: On May 15, 2013, MQVN [Mary Queen of Vietnam] Community Development Corporation, the Vietnamese American Young Leaders Association of New Orleans, Louisiana Environmental Action Network, and Sierra Club settled a lawsuit (filed in 2012) against Waste Management of Louisiana, L.L.C., about the Chef Menteur Landfill. The landfill is located less than a mile and a half from a Vietnamese-American community and Bayou Sauvage National Wildlife Refuge in New Orleans East. The landfill opened without a permit and without public notice or opportunity to comment under an emergency authorization on about April 13, 2006. It accepted hurricane debris waste until about August 15, 2006, when it closed due to earlier litigation. The 2012 lawsuit alleged that the landfill does not meet federal requirements for disposal of the types of waste deposited during the post-Katrina hurricane-recovery effort. In the settlement, Waste Management agreed that it would never re-open the Landfill and to pay for limited monitoring of the Maxant Canal, which flows near the landfill and which residents use for irrigation of small traditional agricultural operations. (101-099.1)

District Court Enters Modified Consent Decree with Additional Requirements for New Orleans Sewerage and Water Board: On April 24, 2013, the U.S. District Court for the Eastern District of Louisiana entered a Second Modified Consent Decree extending deadlines for the New Orleans Sewerage and Water Board to complete repairs on two of the nine collection basins in the City. As a condition of consent to the extension, the Plaintiffs—League of Women Voters, Lake Pontchartrain Basin Foundation, Louisiana Audubon Society, and the Louisiana Environmental Action Network—obtained agreement to add additional milestones to keep repairs on track. The modified decree provides for stipulated penalties if the Board fails to meet these additional milestones. Plaintiffs also obtained the Board's commitment to pursue green infrastructure as part of the repair work and to work with Plaintiffs and EPA toward that end. *United States of America and League of Women Voters, et al. v. Sewerage and Water Board of New Orleans, et al.*, No. 93-cv-3212 (E.D. La.) (135-001)

District Court Enters Consent Decree to Relocate Residents Away from Sewage Treatment Plant: On March 19, 2013, the U.S. District Court for the Middle District of Louisiana entered a Consent Decree to resolve a Clean Water Act citizen suit and intervention in a government enforcement action by the Louisiana Environmental Action Network and Concerned Citizens of University Place Subdivision. Baton Rouge agreed, *inter alia*, to create a buffer around its North Wastewater Treatment Plant by relocating more than 40 households from a predominately minority, lower-income community, to pay fair market value for affected homes without regard to the proximity of the sewage treatment plant, and to follow the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act and its implementing regulations, including provisions for payment of moving expenses, replacement housing payments when necessary to get residents into "decent, safe, and sanitary" homes, and a requirement that no person be displaced before Baton Rouge makes "comparable replacement dwelling(s)" available. Baton Rouge's obligations under the Consent Decree are contingent on the Court's grant of a request to extend deadlines in a federal consent decree from 2002 that governs improvements to the plant. The federal government lodged that request on March 18, 2013. *Louisiana Environmental Action Network v. City of Baton Rouge, et al.*, No. 10-cv-187 (M.D. LA.) (101-117)

District Court Rejects Motions to Dismiss Clean Water Act Citizen Suit: On November 7, 2012, the U.S. District Court for the Southern District of Mississippi denied motions to dismiss Gulf Restoration Network's citizen suit seeking compliance with the Clean Water Act at the City of Hattiesburg's sewage treatment lagoons. The Court found that pre-litigation consent orders that the Mississippi Department of Environmental Quality entered did not moot the Plaintiff's lawsuit because only "developments subsequent to the filing of a citizen suit may moot the citizen's case." The Court further found that the Plaintiff met the redressability requirement of standing doctrine because the "suit is premised upon the theory that MDEQ's actions are not sufficient to ensure that the City will cease violating the CWA." *Gulf Restoration Network v. City of Hattiesburg*, No. 2:12-cv-00036 (S.D. Miss. 2012) (2012 WL 5413909) (157-039)

Louisiana Court of Appeal Blocks Requirement for Disclosure of Personal Details of Members of Plaintiff Citizen Organizations. On September 14, 2012, Louisiana's Fourth Circuit Court of Appeal reversed a trial court judgment that would have required intervenor citizen organizations to disclose the names, addresses, and telephone numbers of all their members residing in Plaquemines Parish. The Court explained that because the citizen groups satisfied the three-part test to prove associational standing to sue on behalf of members, "the additional information sought ... is irrelevant and would not lead to the discovery of relevant evidence." *Industrial Pipe, Inc. v. Plaquemines Parish Council*, 2012-1348 (La. App. 4 Cir. 9/14/12) (100 So.3d 896) (104-029.1)

Appeals Court Clarifies Deadlines for Offshore Drilling Permits: On May 22, 2012, the U.S. Court of Appeals for the Fifth Circuit dismissed an appeal by environmental groups of a district court order about the timeframe for U.S. Department of Interior (DOI) decisions on permit applications for offshore drilling under the Outer Continental Shelf Lands Act (OCSLA). The district court had ruled that the Administrative Procedure Act and OCSLA require DOI to act on permit applications within 30 days of submission. But the Fifth Circuit clarified, "nothing in the [district court's] judgment as amended requires the Government to act on all permit applications within thirty days" and that "the amended judgment does not prevent the Government or the intervenors from arguing that a thirty-day time frame would be unreasonable in a future case." *ENSCO Offshore Company v. Salazar*, No. 11- 30491 (5th Cir.) (2012 WL 1859516) TELC represented the Sierra Club and the Center for Biological Diversity in the Appeal. (126-019.4)

Appeals Court Reverses Dismissal of Clean Water Act Citizen Suit: On April 17, 2012, the U.S. Court of Appeals for the Fifth Circuit reversed a district court's dismissal of a Louisiana Environmental Action Network (LEAN) citizen suit seeking compliance with the Clean Water Act at three Baton Rouge sewage treatment plants. The Court rejected the district court's finding that a 2002 consent decree mooted the citizen enforcement action. The Court also ruled that the "diligent prosecution" bar is not a "jurisdictional" limitation on citizen suits and that the district court must therefore accept all well-pleaded facts in the complaint as true and view the facts in the light most favorable to LEAN. Noting allegations that EPA is not diligently prosecuting a 2002 consent decree and has failed to collect stipulated penalties, the Court remanded the case to the district court to determine whether the lawsuit may go forward. *Louisiana Environmental Action Network v. City of Baton Rouge*, 677 F.3d 737 (5th Cir. 2012). (101-117.1)

MDEQ Withdraws Flawed Total Maximum Daily Load Proposal for the Pearl River: On February 27, 2012, the Mississippi Department of Environmental Quality (MDEQ) notified TELC of its withdrawal of a proposed Total Maximum Daily Load (TMDL) for a segment of the Pearl River near Jackson. On behalf of the Gulf Restoration Network, TELC had submitted comments and an expert affidavit to MDEQ and EPA objecting to the proposed TMDL's methodology and reasoning. MDEQ's proposed TMDL would have allowed the City of Jackson to increase pollutant discharges from its wastewater treatment plant into this segment of the Pearl River. (157-041)

LDEQ Modifies Permit to Meet Comments: On December 22, 2011, the Louisiana Department of Environmental Quality modified its proposed LPDES permit for the Petroplex International Tank Farm, a petroleum storage and terminal facility, to meet comments that TELC submitted on behalf of the Louisiana Environmental Action Network, Community Strength, and others. Among other responses to comments, LDEQ improved the permit by a) prohibiting the use of corrosion inhibitors, b) adding restrictions on soaps and detergents, c) adding effluent limitations for BOD, TSS, and fecal coliform, and d) including a statement that no property rights accompany the permit. (101-121.1)

EPA Disapproves Louisiana's Failure to List the Gulf of Mexico as Impaired: On October 6, 2011, EPA issued a final decision placing the nearshore waters of the Gulf of Mexico on Louisiana's 2008 Clean Water Act Section 303(d) Impaired Waters list as impaired for Dissolved Oxygen, and disapproving Louisiana's failure to do so. The decision responded to the TELC's letter to the EPA, on behalf of the Gulf Restoration Network, requesting that the EPA disapprove Louisiana's failure to list these water bodies. GRN's request focused on the Dead Zone that occurs in the Gulf every year as clear evidence of dissolved oxygen impairment. EPA also ordered that Louisiana establish a Total Maximum Daily Load (TMDL) for dissolved oxygen in the Gulf. (157-023)

Plaquemines Parish Denies Permit for Landfill Expansion: On September 21, 2011, the Plaquemines Parish Council rejected Industrial Pipe Inc.'s request for a coastal use permit to expand its Oakville landfill. The New Orleans Times Picayune noted the day after the Council's action that this landfill "has been profiled around the nation as an example of environmental racism, as the dump was allowed to open in a majority-black neighborhood without proper permits or controls, according to court documents." TELC represented the Oakville Community Action Group and others before the Council. (104-027)

EPA Grants Petition for Objection to Refinery Air Permit: On September 21, 2011, EPA Administrator Lisa P. Jackson issued an order objecting to a Clean Air Act operating permit that the Louisiana Department of Environmental Quality (LDEQ) issued to Murphy Oil USA, Inc. for its Meraux Refinery in St. Bernard Parish, Louisiana. EPA found that LDEQ failed in response to comments to show that the record contained sufficient information to justify the permit's estimates of air emissions that will result from the permitted changes to the refinery. EPA explained that it could not find necessary information in the record to support these estimates. EPA noted allegations in the petition that LDEQ based emission estimates on illegible calculations and references to personal phone conversations. (161-006)

On behalf of and in consultation with its clients, TELC manages the Clean Air Initiative to target dangerous air pollution in Louisiana from industrial facilities, including oil refineries and chemical and petrochemical manufacturing facilities, which are overwhelmingly concentrated in lower-income, minority communities. 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 processes. Below is a sample of clean air matters the Clinic worked on during the Fall 2011–Spring 2013 academic years:



Lawsuits & Administrative Adjudications

Citizens Against Multi-Chem and Marcella Manuel v. Louisiana Department of Environmental Quality, No. 617003 (La. 1 Cir., June 18, 2013) (Appealing a 19th Judicial District Court judgment that dismissed a challenge to an LDEQ decision to issue a minor source Clean Air Act permit to a chemical facility without conducting an environmental impacts analysis or notifying the public) (178-002)

Concerned Citizens Around Murphy v. Perciasepe, No. 2:13-cv-03006 (E.D. La. May 15, 2013) (Seeking an injunction to require EPA to terminate, modify, or revoke an air permit issued for the Valero Meraux Refinery in St. Bernard Parish pursuant to the Clean Air Act) (161-006.2)

White Stallion Energy Center v. EPA, No 12-1100 (D.C. Cir. motion filed Jan.28, 2013) (Motion to intervene in support of EPA's promulgation of regulations governing emission of mercury and other hazardous air pollutants from coal and oil-fired power plants, on behalf of the American Thoracic Society, American College of Preventive Medicine, American College of Occupational and Environmental Medicine, National Association for the Medical Direction of Respiratory Care, and American College of Chest Physicians) (174-001)

Christian Ministers Missionary Baptist Association of Plaquemines Parish, Inc., et al. v. Louisiana Department of Environmental Quality, No. 615595 (19th Jud. Dist. Court, Sept. 21, 2012) (Appealing LDEQ's issuance of a Clean Air Act "minor source" permit to RAM Terminals LLC based on allegations that LDEQ failed to comply with its public trustee duty under the Louisiana Constitution, art. IX, sec. 1, and that the facility creates unacceptable risks to the communities in the vicinity of the proposed facility and to the planned Myrtle Grove Diversion—a freshwater diversion designed to begin restoration of Louisiana's disappearing coastal wetlands) (177-001)

Louisiana Environmental Action Network and Sierra Club v. Jackson, No. 1:12-cv-01096 (D.D.C. July 2, 2012) (Seeking an injunction to require EPA to grant or deny the plaintiffs' petition for an objection to state-issued air permits for the proposed Nucor Steel Facility in Romeville, Louisiana, based on allegations that the permits fail to meet Clean Air Act requirements) (101-115.5)

Louisiana Department of Environmental Quality v. U.S. Environmental Protection Agency, No. 12-60482 (5th Cir., amicus filed April 19, 2013) (Amicus brief submitted on behalf of Louisiana Environmental Action Network seeking denial of motion filed by Consolidated Environmental Management, Inc. (“Nucor”) to stay a proposed settlement between LEAN and EPA that would require EPA to grant or deny LEAN’s petition asking the agency to object to Nucor’s air permits) (101-115.7) Favorable Ruling May 3, 2013

Citizens Against Multi-Chem v. Louisiana Department of Environmental Quality, No. 617003 (19th Jud. Dist. Court, Nov. 14, 2012) (Appealing LDEQ’s issuance of a Clean Air Act “minor source” permit to a Multi-Chem chemical distribution facility based on allegations that LDEQ failed to comply with its public trustee duty under the Louisiana Constitution, art. IX, sec. 1, especially under the circumstances in which, when located in New Iberia, a similar Multi-Chem facility had exploded in 2011, leading to a mandatory evacuation for citizens located within a one mile radius) (178-001) Adverse Judgment April 8, 2013

Louisiana Environmental Action Network v. Jackson, No. 12-cv-88 (M.D. La. Feb. 15, 2012) (Seeking an injunction to require EPA to respond to Plaintiff’s petition to EPA asking the agency to object to an air permit for Noranda Alumina because the permit fails to require pollution controls mandated by the Clean Air Act) (101-124.2) Settled Jan. 24, 2013

Louisiana Environmental Action Network v. ExxonMobil Corporation, No. 578304 (19th Jud. Dist., May 13, 2009) (Alleging that Exxon’s Baton Rouge chemical plant discharges toxic air pollutants and other air contaminants without a permit to cover those discharges) (101-055) Unfavorable Judgment August 17, 2012

Sierra Club, Louisiana Environmental Action Network, Alliance for Affordable Energy, and Mr. O’Neil Couvillion v. Louisiana Department of Environmental Quality, No. 576989 (19th Jud. Dist., Apr. 1, 2009) (Appealing LDEQ’s modification of Entergy’s Clean Air Act permit for the Little Gypsy power plant to allow release of hazardous air pollutants from burning higher sulfur coal and petroleum coke—fuels associated with global warming) (126-016.4) (Inactive since July 18, 2011 stipulated motion to dismiss following expiration of permit without construction)

Sierra Club, Alliance for Affordable Energy, Louisiana Environmental Action Network, and O’Neil Couvillion v. Louisiana Department of Environmental Quality, No. C583878 (19th Jud. Dist. Court, Oct. 23, 2009) (Appealing LDEQ’s modification of Louisiana Generating’s Clean Air Act permit for the Big Cajun I power plant to allow release of hazardous air pollutants from burning higher sulfur coal and petroleum coke—fuels associated with global warming) (126-014.3) (Inactive since 3/21/12 Motion to Dismiss as Moot following expiration of permit without construction)

In re: Louisiana Department of Environmental Quality Air Permitting Decision Re: Louisiana Generating, LLC Big Cajun I Power Plant, No. 564241 (19th Jud. Dist., March 19, 2008) (Appealing Clean Air Act permits allowing the Big Cajun I power plant to burn higher sulfur coal, a fuel associated with global warming) (126-014) (Inactive since 3/20/12 Motion to Dismiss as Moot following expiration of permit without construction)

Concerned Citizens Around Murphy v. Jackson, No. 2:10-cv-04444 (E.D. La. Dec. 1, 2010) (Seeking an injunction to require EPA to respond to Plaintiff’s petition to EPA asking the agency to object to an air permit for Murphy Oil USA’s Meraux Refinery because the permit fails to require pollution controls mandated by the Clean Air Act) (161-006.1) Dismissed after settlement Sept. 6, 2011

Comments, Notices, and Administrative Petitions

Notice of Intent to file Clean Air Act citizen enforcement suit against ExxonMobil Chemical Co. on behalf of Louisiana Environmental Action Network and Ms. Stephanie Anthony (Alleging that ExxonMobil's Baton Rouge chemical plant releases dangerous air pollutants in violation of its permits and the Clean Air Act) (101-055.1) (April 22, 2013)

Comments on behalf of Gulf Restoration Network, Louisiana Environmental Action Network, Lower Mississippi Riverkeeper, and Sierra Club - Delta Chapter to the Louisiana Department of Environmental Quality (opposing solid waste permit modification that would increase coal storage area to accommodate increased export capacity at IMT, a coal transfer facility in Plaquemines Parish, and alleging that 1) alternative site analysis is absent, 2) the project violates parish zoning laws, 3) the project is prone to flood risks, 4) IMT must mitigate for coal emissions into air and water, 5) the impact area was improperly delineated, 6) the project will impact cultural sites, and 7) IMT failed to support other assertions). (157-045.1) (Feb. 27, 2013)

Comments on behalf of Louisiana Environmental Action Network, Sierra Club, and O'Neil Couvillion to the Louisiana Department of Environmental Quality (Objecting to a (re-opened) proposed air permit for the Nucor steel facility in Romeville, Louisiana, based on allegations that 1) LDEQ failed to reduce greenhouse gas emission limits to reflect the "best available control technology" analysis appropriate for the "HYL process" specified in the application; and 2) LDEQ failed to gather sufficient information to determine the extent to which use of the HYL process—including use of a shorter smokestack—changes calculations of air quality impacts) (101-115) (Oct. 8, 2012)

Petition to EPA on behalf of the Louisiana Environmental Action Network and Sierra Club (re-submitting two petitions (from June 25, 2010 and May 3, 2011) for an EPA objection to Clean Air Act permits that LDEQ issued for the Nucor steel facility in Romeville, Louisiana, to respond to EPA's announcement that it considers a June 21, 2012, LDEQ response to a March 23, 2012 EPA Order to be a "new proposed permit" that requires a new petition) (101-115.1) (Oct. 3, 2012)

Notice of Intent to Sue EPA on behalf of Concerned Citizens Around Murphy (Providing notice of intent to enforce EPA's non-discretionary duty to issue or deny an air permit for Valero Energy Corp.'s Meraux, La., Refinery and for unreasonable delay in carrying out same) (161-006.3) (May 8, 2012)

Petition to EPA on behalf of Concerned Citizens Around Murphy (Seeking EPA's objection to a Louisiana Department of Environmental Quality Clean Air Act permit for Valero Energy Corp.'s Meraux, La. Refinery, based on allegations that LDEQ failed to resolve EPA's December 21, 2011 objection to the permit) (161-006) (April 2, 2012)

Comments on behalf of the Gulf Restoration Network regarding EPA action on Louisiana implementation of Clean Air Act visibility mandates (Opposing exemption of Louisiana from source-specific technology requirements for electric generating units to reduce nitrogen oxide emissions) (157-042) (Mar. 29, 2012)

Notice of Intent to Sue to EPA on behalf of Louisiana Environmental Action Network and Sierra Club (Providing notice of intent to enforce EPA's non-discretionary duty to respond to a petition for an EPA objection to Louisiana Department of Environmental Quality's issuance of Title V Air Operating Permits for the Nucor Steel iron manufacturing facility in Romeville, St. James Parish, Louisiana) (101-115.5) (Oct. 26, 2011)

Notice of Intent to Sue to EPA on behalf of Louisiana Environmental Action Network (Providing notice of intent to enforce EPA's non-discretionary duty to respond to a petition for an EPA objection to Louisiana Department of Environmental Quality's issuance of a Title V Air Operating permit to Noranda Alumina, LLC for its alumina processing facility in Gramercy, St. John Parish, Louisiana) (101-124.2) (Oct. 24, 2011)

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 water protection programs, to abate harmful water discharges, and to empower citizens to participate effectively in permitting and enforcement processes. The Clinic worked on the following matters during the Fall 2011–Spring 2013 academic years:



Lawsuits & Administrative Adjudications

Save Lake Peigneur, Inc., Louisiana Environmental Action Network, and Roger Stelly v. Secretary, Louisiana Department of Natural Resources, No. 122358E (16th Jud. Dist. Court, April 8, 2013) (Appealing LDNR issuance of Coastal Use Permit to Jefferson Island Storage & Hub, LLC for creation of natural gas storage caverns in a salt dome underneath Lake Peigneur and alleging that LDNR failed to consider the potential negative impacts of the project to people and the environment) (172-001.5)

Waterkeeper Alliance, Atchafalaya Basinkeeper, Galveston Baykeeper, Louisiana Bayoukeeper, Apalachicola Riverkeeper, Louisiana Environmental Action Network v. U.S. Coast Guard, No. 13-289 (D.D.C. Mar. 5, 2013) (Appealing the U.S. Coast Guard's refusal to divulge documents requested under the Freedom of Information Act related to an eight-year oil leak at Taylor Energy Co.'s MC-20 site in the Gulf of Mexico and Taylor's decommissioning efforts) (101-127.1)

RESTORE v. Beauregard Water Works District No. 3, No. 12-cv-2602 (W.D. La., Sept. 28, 2012) (alleging that the Water District in Beauregard Parish, Louisiana, violates the Safe Drinking Water Act by 1) skipping required samples of various contaminants, 2) failing to report data and corrective action in annual Consumer Confidence Reports, 3) violating the total coliform drinking water standard, 4) certifying compliance without regard to violations, and 5) failing to follow certification requirements for the competence of operators) (170-001)

Little Tchefonctte River Association and Gulf Restoration Network v. Artesian Utility Company, Inc., No.12-1923 (E.D. La. July 24, 2012) (Alleging wastewater discharges to the Tchefonctte River without a permit, in violation of the Clean Water Act, at a Covington sewage treatment facility) (167-002)



Gulf Restoration Network, Missouri Coalition For The Environment, Iowa Environmental Council, Tennessee Clean Water Network, Minnesota Center For Environmental Advocacy, Sierra Club, Waterkeeper Alliance, Inc., Prairie Rivers Network, Kentucky Waterways Alliance, Environmental Law & Policy Center, and the Natural Resources Defense Council, Inc. v. Jackson, No. 12-cv-677 (E.D. La. Mar. 13, 2012) (Challenging EPA's denial of a petition for rulemaking under the Clean Water Act to establish numeric water quality standards for nitrogen and phosphorous for Mississippi River Basin states, to abate water quality degradation including the massive low-oxygen "dead zone" in the Gulf of Mexico) (173-001)

Gulf Restoration Network v. City of Hattiesburg (S.D. Miss., Mar. 2, 2012) (Alleging ongoing violations of Clean Water Act discharge permits at two Hattiesburg sewage and wastewater treatment lagoons) (157-039).

Apalachicola Riverkeeper, Atchafalaya Basinkeeper, Galveston Baykeeper, Louisiana Bayoukeeper, Louisiana Environmental Action Network, Lower Mississippi Riverkeeper, and Waterkeeper Alliance v. Taylor Energy Company, L.L.C., No. 12-337 (E.D. La, Feb. 2, 2012) (Alleging that oil leaking into the Gulf from Taylor Well(s), approximately 11 miles off the coast of Louisiana, violates the Clean Water Act and Resource Conservation and Recovery Act) (101-127)

Louisiana Environmental Action Network and Mr. O'Neil Couvillion v. Tommy Martinez, No. 93387B (23rd Jud. Dist., July 31, 2009) (Alleging that the Ascension Parish President drained Alligator Bayou and Spanish Lake without legal authority) (101-118) Adverse judgment May 25, 2010; Dismissed May 24, 2013

United States and State of Louisiana v. City of Baton Rouge and Parish of East Baton Rouge, No. 01-cv-978 (M.D. La., Motion to Intervene filed Mar. 4, 2012) (Moving to intervene on behalf of the Concerned Citizens of University Place Subdivision and the Louisiana Environmental Action Network and alleging that EPA has failed to enforce a consent decree with respect to Clean Water Act violations at Baton Rouge's North Wastewater Treatment Plant) (101-117.2) Voluntarily dismissed after settlement in No. 10-cv-187 March 22, 2013



Louisiana Environmental Action Network v. City of Baton Rouge and Parish of East Baton Rouge, No. 10-cv-187 (M.D. La. Mar. 22, 2010) (Alleging ongoing Clean Water Act violations at three Baton Rouge sewage treatment plants and also alleging that the plants violate interim limits set in a federal consent decree) (101-117) Adverse ruling May 17, 2011 (reversed 4/17/12) Settled March 19, 2013

Center for Biological Diversity v. BP America Production Co. et al., No. 12-30136 (5th Cir., amicus filed May 14, 2011) (Amicus brief submitted on behalf of more than 50 environmental law professors seeking reversal of district court decision that denied an environmental organization standing to sue BP for violations of environmental laws associated with the 2010 Macondo deepwater oil well disaster) (175-001) Unfavorable Opinion January 9, 2013

Vallery v. Louisiana Department of Environmental Quality, No. 2012-C-2061 (La. Sup. Ct., Sept. 14, 2012) (On behalf of Intervenor, Louisiana Environmental Action Network and Howard Charrier, seeking certiorari review of a Louisiana First Circuit Court of Appeal ruling upholding dismissal of an intervention on behalf of Louisiana Environmental Action Network and Mr. Howard Charrier in a judicial review of water permit for discharge of wastewater into an Outstanding Natural Resource Water) (101-109.2) Unfavorable Ruling Nov. 16, 2012

Center for Biological Diversity v. Salazar, No. 10-60417 (5th Cir., May 27, 2010) (challenging approval by the Department of Interior's Minerals Management Service of 11 plans for offshore drilling in the Gulf of Mexico without the consideration of environmental impacts that the National Environmental Policy Act requires) (683 F.3d 158) (169-001) Unfavorable Ruling May 30, 2012

ENSCO Offshore Company v. Salazar, No. 11- 30491 (5th Cir. May. 23, 2011) (Appeal on behalf of Sierra Club and Center for Biological Diversity of summary judgment order requiring the U.S. Bureau of Ocean Energy Management, Regulation and Enforcement to make decisions about permits for deepwater oil wells in the Gulf of Mexico within 30 days) (2012 WL 1859516) (126-019.4) Ruling with both favorable and unfavorable aspects May 22, 2012

In re: Louisiana Department of Environmental Quality Permitting Decision: LPDES Permit to Vanguard SynFuels, (La. 1st Cir., June 2, 2011) (Appealing denial of Intervention on behalf of Louisiana Environmental Action Network and Mr. Howard Charrier for judicial review of water

permit for discharge of wastewater into an Outstanding Natural Resource Water) (101-109.1) Unfavorable Ruling May 2, 2012

Atchafalaya Basinkeeper v. Chustz, No. 11-30471 (5th Cir., May 23, 2011) (Appeal of trial court dismissal of citizen suit against Atchafalaya Basin Program for failure to comply with a Clean Water Act Section 404 permit when dredging Bayou Postillion) (682 F.3d 356) (155-003.1) Unfavorable Ruling April 25, 2012

Louisiana Environmental Action Network v. City of Baton Rouge and Parish of East Baton Rouge, No. 11-30549 (5th Cir. June 27, 2011) (Appealing dismissal of a citizen suit that alleged ongoing Clean Water Act violations at three Baton Rouge sewage treatment plants and also alleging that the plants violate interim limits set in a federal consent decree) (677 F.3d 737) (101-117.1) Favorable Ruling April 17, 2012.

Hornbeck Offshore Services, L.L.C. et al. v. Salazar, 10-cv-01663 (E.D. La., June 7, 2010) (Counsel for Intervenor-Defendant Sierra Club in a challenge by various companies to the U.S. Department of Interior's six-month moratorium on new deepwater oil wells in the Gulf of Mexico) (126-019) Dismissed Aug. 4, 2011

ENSCO Offshore Company v. Salazar, No. 10-cv-01941 (E.D. La. Aug. 23, 2010) (Counsel for Intervenor-Defendant Sierra Club in a challenge to the U.S. Department of Interior's revised moratorium on new deepwater oil wells in the Gulf of Mexico) (126-019.2) Adverse judgment Aug. 4, 2011

Louisiana Environmental Action Network et al. v. Louisiana Department of Environmental Quality, No. 598943 (19th Jud. Dist. Court, Feb. 2, 2011) (Appealing LDEQ's decision to allow experimental recirculation and application of collected leachate to the working face of the Woodside landfill in Walker (Livingston Parish) without conducting an environmental assessment) (101-093.6) Adverse ruling, June 13, 2011

Comments, Notices, and Administrative Petitions

Comments on behalf of Gulf Restoration Network and Louisiana Environmental Action Network to EPA on its proposed disapproval of Louisiana's Clean Water Act 303(d) list of impaired waterbodies (Supporting EPA's listing of three nearshore segments of the Gulf of Mexico for Dissolved Oxygen impairment and requesting that EPA complete a TMDL for these subsegments) (157-036.1) (June 10, 2013)

Comments on behalf of the Lake Pontchartrain Basin Foundation, the Orleans Audubon Society, the League of Women Voters of New Orleans, and the Louisiana Environmental Action Network to the U.S. Department of Justice (supporting proposed Second Modified Consent Decree extending deadlines for repairs of sewerage and water collection systems mandated by Consent Decree in the *U.S. and League of Women Voters v. Sewerage and Water Board of New Orleans* litigation (135-001) (Mar. 28, 2013)

Comments on behalf of Save Lake Peigneur, Inc., Louisiana Environmental Action Network, and Roger Stelly to the Louisiana Department of Natural Resources, Office of Coastal Management (opposing application by Jefferson Island Storage & Hub, LLC, for Coastal Use Permit to dredge, construct, and operate two natural gas storage caverns in a salt dome below Lake Peigneur based on indications that the salt dome is not stable) (172-001.4) (Mar. 4, 2013)

Comments on behalf of the Gulf Restoration Network to the Louisiana Department of Environmental Quality (objecting to revisions to Louisiana's water quality standards weakening its antidegradation policy) (157-024) (Jan. 29, 2013)

Comments on behalf of Gulf Restoration Network to Louisiana Department of Environmental Quality (opposing changes to antidegradation regulations that would decrease Tier 3 protections) (157-024) (Sept. 17, 2012)

Comments on the West Bank and Vicinity Project on Behalf of the Louisiana Audubon Council, Gulf Restoration Network, Delta Chapter Sierra Club, Louisiana Environmental Action Network, and New Orleans Group, Sierra Club (supporting the Corps' current plan to not use Bayou Segnette Waterway dredged material and objecting to any dredging of Bayou Segnette Waterway) (131-006.1) (Sept. 7, 2012)

Comments on behalf of Atchafalaya Basinkeeper, the Delta Chapter of the Sierra Club, Gulf Restoration Network, Louisiana Crawfish Producers Association-West, Louisiana Environmental Action Network, and the Lower Mississippi Riverkeeper to the Louisiana Department of Environmental Quality and the United States Army Corps of Engineers. (Opposing approval of Saint Martin Land Co.'s application for a permit to plug a canal due to the project's impacts on navigation and on environmental and cultural resources.) (155-014) (Sep. 7, 2012)

Administrative Appeal on behalf of Apalachicola Riverkeeper, Atchafalaya Basinkeeper, Galveston Baykeeper, Louisiana Bayoukeeper, Lower Mississippi Riverkeeper, and Waterkeeper Alliance (Appealing the U.S. Coast Guard's refusal to divulge information requested under the Freedom of Information Act related to an oil leak in the Gulf of Mexico approximately 11 miles off the coast of Louisiana from wells owned and operated by Taylor Energy Company, L.L.C.) (101-127.1) (Aug. 20, 2012)

Revised Notice of Intent of Atchafalaya Basinkeeper to Bayou Jack Logging Co. and Robert Wolfe under the Clean Water Act and La. Civ. Code art. 458 (Alleging discharge of fill material into the Atchafalaya Basin without a permit in violation of the Clean Water Act and construction of a dam on Bayou Duquesne in violation of the right of public use) (155-011) (Aug. 10, 2012)

Revised Notice of Intent to Sue the South Beauregard Water District on behalf of RESTORE (alleging that the Water District in Beauregard Parish, Louisiana, violates the Safe Drinking Water Act, for example by failing to perform required tests for drinking water contaminants and by submitting inadequate reports about drinking water quality) (170-001) (May 18, 2012)

Notice of Intent to Sue St. Martin Parish School Board, Good Hope, Inc. and Louisiana Department of Administration on behalf of Atchafalaya Basinkeeper, Louisiana Crawfish Producers Association – West, Sierra Club (Delta Chapter), Louisiana Environmental Action Network, Lower Mississippi River Keeper and Gulf Restoration Network (Alleging that a contract between St. Martin Parish School Board and Good Hope to log 640 acres including water-bottom cypress on Section 16 school board lands violates the Clean Water Act, the Endangered Species Act and La R.S. § 41:1009) (155-012) (May 14, 2012)

Administrative Appeal of EPA Partial Denial of Freedom of Information Act Request on Behalf of the Gulf Restoration Network (Seeking reversal of EPA Region IV's decision to withhold email correspondence between EPA and MDEQ regarding the MDEQ's attempt to set a site-specific dissolved oxygen criterion for the Escatwapa River) (157-040.1) (Mar. 29, 2012)

Notice of Intent of Little Tchefuncte River Association and Gulf Restoration Network to sue the Artesian Utility Company, Inc. for Clean Water Act violations at its Lake Ramsey Subdivision Wastewater Treatment Facility (Alleging discharges without a permit and, alternatively, violations of authorized effluent limitations) (167-002) (Mar. 27, 2012)

Comments on behalf of Louisiana Environmental Action Network and Gulf Restoration Network to the Louisiana Department of Environmental Quality (Objecting to Louisiana's 2012 Clean Water Act Section 303(d) list of impaired waterbodies for failure to follow proper procedures, failure to list water bodies for nutrients, and delisting the nearshore waters of the Gulf of Mexico for dissolved oxygen) (157-036.1) (Feb. 29, 2012)

Notice of Intent on behalf of the Atchafalaya Basinkeeper to St. Martin Land Co. and Good Hope, Inc., under the Clean Water Act and La. Civ. Code art. 458 (Alleging the discharge of fill material into the navigable waterways of the Atchafalaya Basin without a permit is a violation of the Clean Water Act and is an obstruction of a public use under LA Civil Code Art. 458) (155-010) (Feb. 28, 2012).

Notice of Intent of Atchafalaya Basinkeeper to Bayou Jack Logging Co. under the Clean Water Act and La. Civ. Code art. 458 (Alleging discharge of fill material into the Atchafalaya Basin without a permit is a violation of the Clean Water Act; construction of a dam on Bayou Duquesne is a violation of the right of public use) (155-011) (Feb. 24, 2012)

Notice of Intent of Atchafalaya Basinkeeper, Louisiana Environmental Action Network and Louisiana Crawfish Producers' Association West to BEUSA Energy, LLC and A. Wilbert's Sons, LLC under the Clean Water Act and Louisiana Civil Code art. 458 (alleging discharge of fill material without a permit is a violation of the Clean Water Act, and obstructions built in public waterways Brown Bayou, Bristow Bayou and Dixie Bayou must be removed) (155-005 & 155-009) (Feb. 24, 2012)

Comments on EPA Proposed Disapproval of Louisiana's 2010 Clean Water Act 303(d) List on behalf of the Gulf Restoration Network and the Louisiana Environmental Action Network (Supporting EPA's listing of three nearshore segments of the Gulf of Mexico for Dissolved Oxygen and objecting to EPA's failure to disapprove certain delistings and failure to list the Gulf and the Mississippi/Atchafalaya for nutrients) (157-036) (Dec. 30, 2011)

Notice of Intent of Atchafalaya Basinkeeper, Louisiana Environmental Action Network, and the Louisiana Crawfish Producers Association West to Brown Bayou Hunting Club under the Clean Water Act (Alleging any discharge of fill material into the Atchafalaya Basin without a permit is a violation of the Clean Water Act) (155-006) (Nov. 11, 2011)

Notice of Intent of Gulf Restoration Network to sue the City of Hattiesburg, Mississippi for Clean Water Act violations at its Wastewater Treatment Lagoons (Alleging that discharges from the lagoons violate effluent limitations in the City's permits) (157-039) (Nov. 7, 2011)

Notice of Intent of Atchafalaya Basinkeeper, Louisiana Environmental Action Network, and the Louisiana Crawfish Producers Association - West to sue A. Wilbert's Sons, LLC under the Clean Water Act (Alleging any discharge of fill material into the Atchafalaya Basin without a permit is a violation of the Clean Water Act) (155-006) (Oct. 21, 2011) (Revised Nov. 14, 2011)

Notice of Intent of Atchafalaya Basinkeeper, Emerald Coastkeeper, Galveston Baykeeper, Louisiana Bayoukeeper, Louisiana Environmental Action Network, the Lower Mississippi Riverkeeper, and Waterkeeper Alliance to Sue Regarding Leaking Oil in the Gulf of Mexico from Well(s) Associated with Oil Platform 23051 (Alleging that oil leaking into the Gulf from the Taylor Well(s), approximately 11 miles off the coast of Louisiana, violates the Clean Water Act and Resource Conservation and Recovery Act) (101-127) (Oct. 7, 2011) (Revised Oct. 21, 2011)

Request for Notice on Behalf of Concerned Citizens Around Murphy (requested notice of LDEQ's decision on a draft water quality permit for Murphy Oil USA, Inc.'s Meraux Refinery) (161-007) (Aug. 19, 2011)

Wetland loss in southern Louisiana has reached catastrophic proportions, threatening the productivity of ecosystems, the economic viability of its industries, and the safety of its residents. The Endangered Wetlands Initiative uses client-directed administrative comments and litigation to enhance citizen efforts to protect and restore wetlands and empower citizens to participate effectively in wetlands decisions. On behalf of its clients, the Clinic worked on the following matters within its Endangered Wetlands Initiative during the Fall 2011–Spring 2013 academic years:



Lawsuits & Administrative Adjudications

Ouachita Riverkeeper and Save the Ouachita v. Temple, No.12-803 (D.D.C. May 17, 2012) (Alleging that the U.S. Army Corps of Engineers erred in authorizing construction of the El Dorado pipeline through more than 16 acres of wetlands in Union County, Arkansas under a general permit that allows adverse impacts to no more than 0.5 acres of wetlands) (166-005) Unfavorable Ruling April 10, 2013

Concerned Citizens of Assumption Parish, et al. v. Meredith W. B. Temple, et al., No. 11-2545 (E.D. La. Oct. 10, 2011) (Appealing the U.S. Army Corps of Engineers' refusal to divulge information under the Freedom of Information Act related to Belle Company's appeal of a wetlands determination that a Corps Division made in response to Belle's proposal for a new landfill in Assumption Parish) (111-005.2) Settled Aug. 2, 2012

Gulf Restoration Network v. Hancock County Development, LLC and Joshua Ladner, No. 1:08-cv-00186-LG-RHW (S.D. Miss., May 8, 2008) (Citizen suit against developers for failure to obtain a Clean Water Act Section 404 permit before filling wetlands for planned development on 700 acres near Stennis, Mississippi) (772 F. Supp.2d 761, 2011 WL 482520, 2009 WL 3841728, 2009 WL 259617) (157-019) Settled Aug. 23, 2011

Comments, Notices, and Administrative Petitions

Administrative Appeal on behalf of the Atchafalaya Basinkeeper, Louisiana Crawfish Producers Association – West, and the Louisiana Environmental Action Network (Appealing the U.S. Fish & Wildlife Service's refusal to divulge information requested under the Freedom of Information Act related to the agency's review of a U.S. Army Corps of Engineers review of a project's effect on the Louisiana black bear) (155-004.1) (May 6, 2013)

FOIA request on behalf of the Atchafalaya Basinkeeper to the U.S. Army Corps of Engineers (requesting documents related to building and filling done by A. Wilberts' Sons LLC and/or Beusa Energy Inc. within one mile of Interstate Highway 10 in Iberville Parish) (155-015) (Nov. 14, 2012)

Comments on behalf of Atchafalaya Basinkeeper, Louisiana Crawfish Producers Association-West, and Louisiana Environmental Action Network to the United States Army Corps of Engineers (Opposing proposed transfer and reissuance of after-the-fact Section 404 permits to Atchafalaya Investments for destruction of wetlands in Atchafalaya Basin) (155-004) (Sept. 4, 2012)



Administrative Appeal of Denial of Freedom of Information Act Request on Behalf of the Concerned Citizens of Assumption Parish and the Louisiana Environmental Action Network to Secretary of the Army (requesting reversal of the U.S. Army Corps of Engineers, Vicksburg Division's, denial of FOIA request for documents submitted by Belle Corporation in connection with its administrative appeal of Corps' jurisdictional determination designating its site as wetlands) (111-005.1) (Aug. 23, 2011)

The Community Preservation Initiative helps Louisiana residents defend their communities and environment against damage from land use decisions that threaten the historic value, cultural fabric, and environmental integrity of communities. On behalf of citizens and community organizations, the Clinic represented communities in the following matters during the Fall 2011–Spring 2013 academic years:



Lawsuits & Administrative Adjudications

Industrial Pipe, Inc. v. Plaquemines Parish Council, et al., No. 59-189 (La. 4 Cir., May 29, 2013) (Appealing, on behalf of the Intervenor Oakville Community Action Group, the Louisiana Environmental Action Network, and Gloria Mayfield, a 25th Judicial District Court judgment granting landfill owner/operator Industrial Pipe’s challenge to the denial of its Coastal Use Permit application by the Plaquemines Parish Council) (104-029.2)

Markle Interests, LLC v. U.S. Fish & Wildlife Service et al. (E.D. La. motion filed April 25, 2013) (Motion to intervene on behalf of the Center for Biological Diversity and Gulf Restoration Network in support of the U.S. Fish and Wildlife’s designation of critical habitat for an endangered species, the dusky gopher frog) (169-002)

MQVN Community Development Corporation, Vietnamese American Young Leaders Association of New Orleans, et al. v. Waste Management of Louisiana, LLC, No 12-cv-546 (E.D. La. Feb. 28, 2012) (Alleging that the Chef Menteur landfill—located less than 1.5 miles from a Vietnamese-American community and Bayou Sauvage National Wildlife Refuge in New Orleans East—violates federal regulatory standards and is therefore an “open dump” that is prohibited by the Resource Conservation and Recovery Act) (101-099.1) Settled May 28, 2013

Industrial Pipe, Inc. v. Plaquemines Parish Council, et al., No. 00059189 (25th Jud. Dist. Ct. La. Nov. 3, 2011) (Counsel for Intervenor Oakville Community Action Group, Louisiana Environmental Action Network, and Gloria Mayfield in a challenge to Plaquemines Parish Council’s decision to deny a Coastal Use Permit to Industrial Pipe for its landfill expansion project) (104-029) Adverse Judgment April 30, 2013

Louisiana Environmental Action Network v. Louisiana Department of Environmental Quality, No. 2012-C-1926 (La. Sup. Ct., Aug. 24, 2012) (Seeking certiorari review of a Louisiana First Circuit Court of Appeal ruling upholding dismissal of a challenge to an LDEQ decision to allow experimental recirculation and application of collected leachate to the working face of the Woodside landfill in Walker (Livingston Parish) without conducting an environmental assessment) (101-093.8) Unfavorable Ruling November 9, 2012

Industrial Pipe v. Plaquemines Parish Council, et al., No. 2012-C-1348 (La. 4th Cir., Sep. 11, 2012) (On behalf of Intervenor, Oakville Community Action Group and Louisiana Environmental Action Network, seeking certiorari review of 25th Judicial District Court discovery order compelling disclosure of group member names, addresses, and contact information) (104-029.1) Favorable Ruling Sept. 14, 2012

Louisiana Environmental Action Network et al. v. Louisiana Department of Environmental Quality, No. 598943 (La. 1 Cir., Aug. 19, 2011) (Appealing a 19th Judicial District Court judgment that dismissed a challenge to an LDEQ decision to allow experimental recirculation and application of collected leachate to the working face of the Woodside landfill in Walker (Livingston Parish) without conducting an environmental assessment) (101-093.7) Unfavorable Ruling July 25, 2012

Holy Cross Neighborhood Association, Gulf Restoration Network, Louisiana Environmental Action Network, Citizens Against Widening the Industrial Canal, and Sierra Club v. U.S. Army Corps Of Engineers, No. 10-cv-1715 (E.D. La., June 10, 2010) (Alleging that the U.S. Army Corps of Engineers' Industrial Canal lock replacement project violates the National Environmental Policy Act and the Clean Water Act because, among other things, the Corps failed to consider reducing disposal of contaminated dredged spoil by about half by implementing a "shallow draft" alternative—even though the Corps assumed there will be "no deep draft benefits associated with the authorized plan over the period of analysis.") (2011 WL 4015694; 774 F.Supp.2d 806), (112-004.1) Favorable Judgment Sept. 13, 2011.



Comments, Notices, and Administrative Petitions

Comments on Clean Harbor Baton Rouge, LLC's post-closure permit modification application on behalf of Concerned Citizens of the Alsen Community and Albertha Hasten (requesting, *inter alia*, that LDEQ hold a public meeting in the vicinity of the Clean Harbors hazardous waste treatment, storage, and disposal facility in Alsen, Louisiana to answer questions about the proposed modification) (176-001) (Sept. 10, 2012)

Comments on behalf of Atchafalaya Basinkeeper and Louisiana Crawfish Producers Association - West (Opposing St. Martin Parish School Board's contract to log 640 acres including water-bottom cypress on Section 16 school board lands) (155-012) (Mar. 24, 2012)

Comments on behalf of the Oakville Community Action Group, Louisiana Environmental Action Network, Sierra Club, and Anne Higgins on Industrial Pipe, Inc.'s application for a coastal use permit to fill wetlands to expand its construction and demolition debris landfill (expressing community's concern that landfill does not meet zoning, unlined facility will leach contaminants into wetlands, expansion will prolong health and safety threats to community) (104-027) (Aug. 11, 2011)



- June 14, 2013 attended hearing on Taylor Gulf Well Motion to Dismiss in support of clients.
- May 23, 2013 attended a Nutrient Trading Webinar hosted by the Mississippi River Collaborative.
- May 17-20, 2013, attended River Rally hosted by the River Network. River Rally is a gathering of clean water advocates to learn the best strategies for restoration, test and improve the newest tools and technologies for protection, and discuss critical information from the field.
- May 13, 2013, met with Allen Green of Oakville, Louisiana community and conducted a survey of the Oakville community, landfill and adjacent levees.
- April 23, 2013, prepared press release on ExxonMobil notice of intent to file suit.
- April 18, 2013, hosted and attended a presentation by the Sierra Club and the Tulane Green Club on “The New Atlantis: the Latest Trends in Climate Science and How You Can Help Defend Coastal Louisiana from Climate Chaos.”
- April 19, 2013, participated in teleconference of the Clean Coastal Commerce Coalition
- April 15, 2013, prepared press release on Lake Peigneur Coastal Use Permit lawsuit.
- March 12-14, 2013, Participated in the meeting of the McKnight Foundation-funded Mississippi River Collaborative held in Louisville, Kentucky. The Collaborative seeks to improve water quality in the Mississippi River watershed through a combination of legal actions, policy changes, public outreach, and education.
- March 8, 2013, gave interview on environmental injustice to Claire Moreaux of Sacred Heart School.
- March 5, 2013, site visit to Metairie, Louisiana with Virginia Garetano for survey of problematic energy transformers in area.

- February 27, 2013, attended Sierra Club meeting on coal terminals of Plaquemines Parish at Belle Chasse Auditorium.
- February 21, 2013, attended Plaquemines Parish Disaster Recovery Planning Stakeholders Meeting in Port Sulphur, LA for information on Ironton community.
- February 20, 2013, field trip to Ironton, Louisiana for photography and reconnaissance.
- February 15, 2013, met with Ms. Joyce Cornin of Ironton community.
- February 15, 2013, met with Reverend Johnson and Reverend Brooks of Ironton community.
- February 5, 2013, met with Wetlands Strategy Taskforce and EPA representative to discuss Morganza to the Gulf Draft EIS produced by the United States Army Corps of Engineers.
- January 31, 2013, met with community members of “Concerned Citizens of University Place Subdivision” to discuss concerns regarding signing consent decree with Baton Rouge on sewer treatment plant case.
- January 28, 2013, attended meeting with Concerned Citizens Around Murphy and St. Bernard Parish Government leadership.
- January 24, 2013, attended Gulf Restoration Network’s Open House.
- January 10, 2013, met with Matt Rota of Gulf Restoration Network regarding Wetlands Strategy Taskforce and environmental issues in Louisiana.
- January 3, 2013, met with Barry Kohl, President of the Audubon Council regarding Wetlands Strategy Taskforce.
- December 11, 2012, Ironton Coal Meeting, met with community members and strategists on expansion of coal export terminals to the Ironton area and Gulf Coast.
- December 11, 2012, met with community members organized by “Concerned Citizens of University Place Subdivision” to discuss concerns regarding consent decree with Baton Rouge on sewer plant case.
- June 27, 2012, St. James Parish Community Meeting, met with community members organized by “Concerned Citizens and Youth of St. James Parish Organization Hwy 44 through 3125” to discuss concerns about the increased industrialization of the Romeville area.
- June 20, 2012, Presentation, attended *Cuba's Offshore Oil Development, Potential Implications for the United States*, New Orleans Bar Association Oil & Gas Committee

- June 18, 2012, Alsen Community Meeting, hosted by Alsen/St. Irma Lee Community Enterprise, Inc.: Provided input on an EPA work plan for assessment of the Devil's Swamp Lake Superfund site.
- June 4, 2012, Meeting with Indian environmental officials, *Climate Change and Clean Energy, A Project for India*, sponsored by the U.S. Department of State and Citizen Diplomacy Council
- May 31, 2012, attended the Big River Works symposium in New Orleans. The Big River Works meetings are hosted by America's Wetland Foundation.
- May 30, 2012, attended a meeting hosted by the Environmental Integrity Project in Houston on Coal Export Terminals expanding on the Gulf Coast, particularly in Louisiana and Texas.
- April 11-12, 2012, Participated in the meeting of the McKnight Foundation-funded Mississippi River Collaborative held in New Orleans. The Collaborative seeks to improve water quality in the Mississippi River watershed through a combination of legal actions, policy changes, public outreach, and education.
- March 20, 2012, Presentation, *The Environmental Law Clinic's Role*, New Orleans Bar Association Oil & Gas Committee
- February 28, 2012, Moderator, *Government Accountability Project Whistleblower Tour*, Local sponsor: New Orleans Coalition on Open Governance.
- February 3, 2012, Presentation, *Two Years After the Gulf Oil Spill*, ABA Section of International Law, 2012 ABA Midyear Meeting
- December 7, 2011, Presentation, *The Future of Offshore Leasing*, 2nd International Offshore Oil & Law Conference, The Institute for Energy Law of the Center for American and International Law
- October 24, 2011, *Keynote Address*, National Petrochemical & Refiners Association Environmental Conference.
- September 15, 2011, Supported clients by attending meeting of the Green Collaborative.
- September 7, 2011, Participated in a meeting of Horizon Initiative New Orleans discussing integrated stormwater management strategies and neighborhood drainage workshops.

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