



Tulane Environmental Law Clinic

Annual Report

2002-2003

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Message From the Director

Dear Colleague:

I am pleased to introduce the 2002-03 Annual Report for the Tulane Environmental Law Clinic.

At the Clinic, we live in two realities. One corresponds to the first part of our mission – to train strong, ethical litigators. It is hard not to paint a rosy picture of this reality: As part of a top-five ranked environmental law program, we attract talented and motivated student attorneys and have the pleasure of helping them come into their own. We are blessed with a supportive Law School and University, a capable staff, and an abundance of challenging, cutting edge issues. We win a fair share of victories, and our alumni are making us proud.

Our second reality corresponds to our mission to provide environmental legal services for those who would otherwise go unrepresented. It is more problematic. As Louisiana's only public-interest environmental law firm, we know that cases we turn down are unlikely ever to be brought. Many of our clients live in communities under siege, surrounded by sources of toxic pollution. Too much pollution goes unmonitored and too many violations go unabated. Poor and minority communities suffer a disproportionate share of the impacts. As professionals, we celebrate our victories and take our losses in stride. But for our already struggling clients, each loss can be a calamity.

Fortunately, most of our clients retain their optimism, viewing themselves as activists rather than victims. And while it sometimes seems we take a step forward only to take one back, we are having a positive impact. EPA and Louisiana regulators have acknowledged many of the regulatory system's problems and have dropped some policies that failed to conform to the law. An awareness is spreading among the business community that it does not pay to try to roll over residents' concerns.

No one wants to see litigation block whatever they view as progress. Professionals on all sides of environmental issues, however, know that our regulatory system's credibility depends on community participation in environmental decisions, regardless of community residents' ability to pay lawyers and even when their views spark controversy. As lawyers, we owe each of our clients a duty of loyalty. But we serve not only our clients, but also our profession, State, and Nation by training strong, ethical litigators and by helping the Bar tackle its obligation to make the legal system work for everyone.

We prepared this report for all the Tulane Environmental Law Clinic's constituents, including our clients, alumni, funders, academic colleagues, students, and fellow environmental professionals – even our clients' opponents. No single one of you is likely to favor each and every step we take on behalf of a client. Nonetheless, this is *your* environmental law clinic and we want it to make you proud.

Very truly yours,



Adam Babich, Clinic Director

TULANE ENVIRONMENTAL LAW CLINIC MISSION:

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

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



Background and Overview

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 only 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.

Because private foundations (listed on page 29) and individual donors supplement the Law School's funding of the Clinic, the Clinic can provide access to the courts for clients even on complex, high-impact cases. Private funding also supports the Clinic's Community Outreach Program, which helps community members participate effectively in state and local environmental decisions. The Clinic's legal work is done primarily by twenty-six law students (who receive academic credit, not money, for their labors). The Clinic is therefore able to deliver a large volume of high quality environmental legal services for the price of fielding four staff attorneys, a community outreach director (assisted by volunteer, undergraduate interns), and a legal secretary. 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."

The need for public-interest environmental legal services in Louisiana is compelling. Although Louisiana is blessed with abundant natural resources and ecological diversity, as one of the Nation's most impoverished states, it is under constant pressure to attract even more industrialization and development. The state's Legislative Auditor has reported that Louisiana's Department of Environmental Quality ("LDEQ") "may not be fully protecting the health and environmental resources of the state because of deficiencies in its monitoring [and enforcement] activities." On the federal level, EPA's Office of Inspector General announced it "could not assure the public that Louisiana was protecting the environment." EPA's Toxic Release Inventory consistently identifies Louisiana as a hot spot for industrial pollution. Louisiana is also losing about 25-35 square miles of coastline each year, in large part due to mismanagement of the state's wetlands.

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.

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 seeks to accept educationally worthwhile cases where the client is not reasonably able to obtain representation from the private bar. Before accepting a new case, the Clinic submits it to a Legal Advisory Board (listed on the next page) for review and approval.



Members of Louisiana Environmental Action Network at a meeting with EPA officials

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.

April 2003 to Present

Professor Paul Barron	Professor Jane L. Johnson
Daria Burgess Diaz, Esq.	Michele Merkel, Esq.
Kristen H. Engel, Esq.	Ronald Simon, Esq.
Doris Falkenheiner, Esq.	Elizabeth Teel, Esq.
Professor Oliver A. Houck	

August 2002 - April 2003

Professor Paul Barron	Doris Falkenheiner, Esq.
Kirsten H. Engel, Esq.	Professor Jane L. Johnson
Daria Burgess Diaz, Esq.	Professor Oliver A. Houck
Ronald Simon, Esq.	Anne Sobol, Esq.

Clients

Many Clinic 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 individual persons, during the 2002 – 2003 school year:



Alliance against Waste and Action to Restore the Environment

Louisiana Audubon Council

Alliance for Affordable Energy

Louisiana Bucket Brigade

Association of Community Organizations for Reform Now

Louisiana Communities United

Bogue Lusa Water Works

Louisiana Democracy Project

Citizens for a Clean Tangipahoa (CFACT)

Louisiana Environmental Action Network

Concerned Citizens Coalition

North Baton Rouge Environmental Association

Concerned Citizens of Iberville Parish

Oakville Community Action Group

Concerned Citizens of Livingston Parish

Sierra Club-Delta Chapter

Concerned Citizens of New Sarpy

Sierra Club-New Orleans Chapter

Gulf Restoration Network

St. John Citizens for Environmental Justice

Holy Cross Neighborhood Association

St. James Citizens for Jobs and the Environment

Lake Maurepas Society

Save Our Wetlands

Lake Pontchartrain Basin Foundation

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.

Sallie Davis, Staff Attorney

Ms. Davis served as a staff attorney at the Clinic during the summer and fall 2002 semesters. Ms. Davis has a Bachelor of Science degree in Biology and Environmental Studies from Tulane University. She earned a master's degree in Public Policy and Management at the University of Southern Maine in 1993 and then worked as a consultant in health and transportation policy. Ms. Davis returned to law school in the late nineties and earned her J.D. from University of Maine School of Law. She currently works for the Gulf Restoration Network as the Fisheries Director.

Esther Boykin, Staff Attorney

Ms. Boykin worked at the Clinic from January to June 2003. She joined the Clinic staff after litigating for Earthjustice, a public interest environmental law firm, for over seven years. Before that she clerked for Judge Felicia T. Williams of the Louisiana Court of Appeal, Second Circuit. She earned her J.D., *cum laude*, from the University of Alabama School of Law and her LLM in Energy & Environmental Law, *with distinction*, from Tulane Law School. She has authored and given presentations on environmental law, natural resources law, and legal ethics topics.

Rebecca Dayries, Community Outreach Director

Rebecca Dayries has been with the Tulane Environmental Law Clinic's Community Outreach Program since 1998 and has directed the program since 2000. Ms. Dayries 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 has worked with grassroots communities and environmental leaders throughout Louisiana and has 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 has worked at the Clinic since 1993. Ms. Broden earned her B.A., *cum laude*, in paralegal studies from Tulane University in May 2003.

Student Practice



Class of 2003

responsibilities afforded by these court rules enhance the Clinic's ability to provide students with real-world litigation experience.

Each year, the Clinic trains twenty-six 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

Student Attorneys

Aaron Brooks
Deshonda Charles
Edward Dimayuga
Aimee Durel
David Fasanloye
Joshua Hansen
Courtney Harrington
Mohana Jawahar
Andrea Kang
Josh Katzman
Ashleye Keaton
Leslie Keig
Alison Kirshner
Mary Klinefelter
Kelli Markelwitz
Gerald Mead
Kalanit Oded
Crissy Pellegrin
Blythe Rogers-Lopez

Napoleon Sharma
Andrew Sockol
Lemuel Thomas
Jeffrey Weisz
Erin Wester
Christopher Williams
Casey Youn

Research Assistants

Jennifer Bickford
Matthew Hodges
Richard Melynk
Amy Nelson

Interns

Erin Ballard
Alexandra Cervenka
Meghan Greeley
Steven Herman
Kimberly Levy
Heather Pagano

Legal Work Performed

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 grassroots activists to participate effectively in the permitting and enforcement process. The Clinic has performed the following work on the Clean Air Initiative during the 2002 - 2003 school year:

Comments on behalf of Louisiana Environmental Action Network and Les Ann Kirkland re: Dow Chemical Company's Vinyl II Plant Part 70 permit modifications (Opposing the proposed Part 70 air permit modification because it violates numerous provisions of the Clean Air Act and state and federal regulations. The facility is located in Iberville Parish, an area that does not meet minimum health protection standards.) (August 20, 2003)

Louisiana Environmental Action Network v. Whitman, No. 03-1338 (E.D. La., May 12, 2003) (Lawsuit seeking an injunction to require EPA to either grant or deny LEAN's petition for an EPA veto of an LDEQ Clean Air Act permit for Dupont Dow Elastomers' Chloroprene Unit. The permit allows emission of untreated chloroprene, a hazardous air pollutant.)

Supplemental Notice of Intent to Sue EPA on behalf of Louisiana Environmental Action Network and 7 other organizations re: Failure to respond to the groups' petition to audit the Emission Reduction Credit Bank (Supplementing the January 13, 2003 notice to EPA that the petitioners will bring a lawsuit to compel EPA to audit the Emission Reduction Credit Bank based on serious flaws in the bank acknowledged by EPA and LDEQ.) (May 9, 2003)

Notice of Louisiana Environmental Action Network re: EPA's failure to discharge its mandatory duty to review emission standards for hazardous air pollutants from process vents (40 C.F.R. § 63.113) under Clean Air Act § 112(d) (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%.) (March 31, 2003)



Client at press conference

In re: ExxonMobil Refining and Supply Company Pipestill Complex Facility, No. 505333 (19th Jud. Dist., Mar. 7, 2003) (Lawsuit challenging LDEQ's refusal to provide for a public hearing on a Part 70 Clean Air Act permit application.)

Notice of Intent to Sue EPA on behalf of Louisiana Environmental Action Network and 7 other organizations re: Failure to respond to the groups' petition to audit the Emission Reduction Credit Bank (Notifying EPA that the petitioners will bring a lawsuit to compel EPA to audit the Emission Reduction Credit Bank based on serious flaws acknowledged by EPA and LDEQ.) (January 13, 2003)

Petition to EPA on behalf of Louisiana Environmental Action Network re: Dow Chemical Company Louisiana Operations Complex Cellulose and Light Hydrocarbons (Requesting that EPA veto an LDEQ permit for increased emission of volatile organic compounds in Iberville Parish, an area that already violates federal health protection standards for ozone pollution.) (December 27, 2002)

In re: Dow Chemical Company, Louisiana Operations Complex, No. 502251 (19th Jud. Dist., Dec. 9, 2002) (Lawsuit challenging an LDEQ permit for increased emission of volatile organic compounds in Iberville Parish, which already violates federal health protection standards for ozone pollution.)

Louisiana Environmental Action Network v. U.S. Environmental Protection Agency, No. 02-60991 (5th Cir., Nov. 22, 2002) (Lawsuit challenging EPA's approval of Louisiana's "state implementation plan" which (1) purported to extend the federal deadline for complying with the health protection standard for ozone air pollution in the Baton Rouge area, and (2) failed to require state-of-the-art controls for new toxic pollution in already overburdened communities.)

Juanita Stewart & Louisiana Environmental Action Network v. Whitman, No. 02-1030-C-M1 (M.D. La., Oct. 31, 2002) (Lawsuit seeking to compel EPA to rule on Ms. Stewart's and LEAN's February 2002 petition asking EPA to veto LDEQ's granting of an air permit that would allow Georgia-Pacific to illegally offset and bank emission reduction credits for volatile organic compounds in an area that fails to meet minimum health protection standards for ozone pollution.)

Pursuant to a settlement agreement, EPA published notice of its decision to partially grant and partially deny the petition in the Federal Register on June 10, 2003. EPA ordered the LDEQ to "(1) Reconsider whether [Nonattainment New Source Review (NNSR)] is an applicable requirement for the 1986-1992 projects, and determine the appropriate volatile organic compound emission limit based on this determination; (2) provide an adequate explanation of the periodic monitoring at issue; and (3) provide an adequate statement of basis on these particular NNSR and periodic monitoring issues."

Comments on behalf of Louisiana Environmental Action Network and Albertha Hasten re: Dow Chemicals Low Salt Project (Cellulose Plant), Light Hydrocarbons Plant permit (LHC-III), and VOC 10 ERC applications (Challenging an LDEQ permit for increased emission of volatile organic compounds in Iberville Parish, which already violates federal health protection standards for ozone pollution.) (October 25, 2002)

Comments on behalf of the Louisiana Environmental Action Network re: ExxonMobil Chemical Company Baton Rouge Chemical Plant MEK/SBA Unit (Opposing issuance of a permit that relies on a "netting" analysis to avoid Nonattainment New Source Review (i.e., the requirement of state-of-the-art controls in an area that already violates health

protection standards) where the record does not contain sufficient information to determine whether the netting analysis is appropriate.) (August 26, 2002)

Comments on behalf of the Louisiana Environmental Action Network re: EPA's proposal to approve changes to Louisiana's regulation of emissions (New Source Review, Nitrous Oxide rules) and of emissions banking (Emissions Reduction Credit Rule) (Challenging these rule changes because they would allow companies to increase emission of volatile organic compounds (which contain hazardous pollutants and toxics) that increase health problems in already overburdened environmental justice communities.) (August 22, 2002)



Staff Attorney Karla Raettig and
Student Attorney Leslie Keig

The Clinic also worked on the following cases that were filed prior to the 2002 - 2003 school year:

Appeal on behalf of Louisiana Environmental Action Network and Juanita Stewart re: Louisiana Department of Environmental Quality's approval of an air permit for Georgia-Pacific Corporation No. 2002/CA/2377 (1st Cir. La., July 19, 2002) (Challenging the district court's dismissal of an appeal of LDEQ's failure to conduct an environmental assessment before authorizing increased air emission of volatile organic compounds in an area that already violates federal health-protection standards for ozone pollution.) The First Circuit Court of Appeals heard oral argument on August 13, 2003.

Concerned Citizens of New Sarpy v. Orion Refining Corp., No. 01-3704 (E.D. La., Dec. 11, 2001) On behalf of the Concerned Citizens of New Sarpy ("CCNS"), the Clinic filed a Clean Air Act citizen enforcement suit against Orion Refining Corp. for violations of the Clean Air Act. That lawsuit sparked notices of violation from both LDEQ and EPA. Orion and LDEQ proposed to enter into a settlement to require, among other things, root cause analyses of excess air emissions from equipment malfunctions and an enhanced program for leak detection and repair.

The Clinic filed comments on the LDEQ/Orion settlement, persuading Louisiana's Attorney General to withhold his consent to the settlement. On December 19, 2002, LDEQ and CCNS signed a settlement agreement that (1) made the LDEQ/Orion settlement enforceable in federal court, (2) required enhanced sulfur dioxide monitoring

between Orion's refinery and the community, and (3) created a local document repository. In turn, CCNS withdrew its objections to the LDEQ/Orion settlement and LDEQ signed that document.

Orion has since entered into Chapter 11 bankruptcy and has sold its refinery to Valero Energy Corporation. The Clinic recently submitted comments to the Louisiana Department of Environmental Quality objecting to any transfer of Orion's air permits to Valero without adopting the settlement agreements mentioned above.

Sierra Club, Clean Air and Water, and Community In-Powerment Association v. U.S. Environmental Protection Agency, No. 01-60537 (5th Cir., July 13, 2001) The Clinic served as local counsel to the Sierra Club, Clean Air and Water, and Community In-Powerment Development Association on their successful challenge to EPA's Ozone Transport Policy. The Fifth Circuit rejected EPA's attempt to extend the deadline for attaining the health protection standard for ozone pollution in the Beaumont/Port Arthur area in a published opinion issued on December 11, 2002. Clinic student attorneys assisted in editing and producing the Fifth Circuit Brief and in preparing the lead counsel (Marc Chytilo) for a successful oral argument.

Louisiana Environmental Action Network v. Whitman, No. 00-CV-879-A-M3 (M.D. La., Nov. 17, 2000) The Clinic, on behalf of the Louisiana Environmental Action Network, had received a favorable judgment in a Clean Air Act lawsuit, compelling EPA to issue a July 2002 determination that the Baton Rouge area had missed its November 15, 1999 attainment deadline for attaining the federal health protection standard for ozone pollution. Under the Clean Air Act, a determination that an area missed such an attainment deadline results in a reclassification of that area (*i.e.*, a "bump up") to the next higher category of nonattainment (in this case, from "serious" to "severe" nonattainment). In turn, this reclassification triggers safeguards to reduce ozone pollution, including reduction of thresholds for application of Nonattainment New Source Review.

In October 2002, relying on its Ozone Transport Policy, EPA withdrew its determination that the Baton Rouge area had missed its attainment deadline and purported to extend that deadline to avoid the "bump up" required by the Act. On LEAN's behalf, the Clinic challenged EPA's action before the Fifth Circuit Court of Appeals. Meanwhile, in a case involving the Beaumont/Port Arthur area, the Fifth Circuit overturned EPA's Ozone Transport Policy. EPA therefore agreed to request a remand from the Fifth Circuit, requiring EPA to implement Congress's "bump up" scheme as written. On April 24, 2003, EPA published its reclassification of the Baton Rouge nonattainment area. This change increases the stringency of regulations that govern emission of volatile organic compounds in the area.

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 significantly reform the state water protection program, to abate harmful water discharges, and to empower grassroots activists to participate effectively in the permitting and enforcement process. The following work was performed last year on the Water Quality Protection Initiative:



Deputy Director John Suttles & Student Attorney Joshua Hansen at press conference announcing a Clean Water Act enforcement initiative

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 revised draft 2002 303(d) list of waters requiring a Total Maximum Daily Load and requesting that LDEQ modify the list to comply with the Clean Water Act.) (July 2, 2003)

LEAN v. Honeywell International, Inc., No. 03-469 (M.D. La., June 12, 2003) (Citizen enforcement suit seeking declaratory and injunctive relief, civil penalties and other appropriate relief from Honeywell's documented and unresolved violations of the Clean Water Act, including excess discharges of substances that contain or affect pH, Total Suspended Solids, and Fluoride.)

LEAN v. CII Carbon, L.L.C., No. 03-1626 (E.D. La., June 6, 2003) (Seeking declaratory and injunctive relief, civil penalties and other appropriate relief from CII Carbon's documented and unresolved violations of the Clean Water Act, including excess discharges of substances that contain or affect Total Suspended Solids, Chemical Oxygen Demand, Oil and Grease, Fecal Coliform, pH, and Biological Oxygen Demand.)

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.)

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.)

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)

Notice of Louisiana Environmental Action Network re: Weber Marine, Inc. (Notice of violations and intent to file a citizen suit under the Clean Water Act.) (February 5, 2003)

After receiving the notice of violations, Weber contacted the Clinic to attempt to resolve its violations of the Act without the necessity of a lawsuit. Clinic students negotiated a successful settlement by which Weber will comply with the Act, provide proof of its continued compliance and allow an inspection of its facility to verify its compliance efforts.

Notice of Louisiana Environmental Action Network re: Evans Industries (Notice of violation and intent to file a citizen suit under the Clean Water Act.) (February 5, 2003)

A provision of an earlier settlement of a Clean Water Act citizen suit required Evans Industries to adhere to a compliance schedule or pay stipulated penalties for future violations. LEAN's notice of violations alerted the parties to the prior enforcement proceeding of Evans' continuing violations, resulting in enforcement of the stipulated penalty provisions.

Notice of Louisiana Environmental Action Network re: Pioneer Americas L.L.C. (Notice of violations and intent to file a citizen suit under the Clean Water Act.) (February 5, 2003)

Approximately two months after the Clinic issued the notice of violations to Pioneer, the Department of Environmental Quality amended its earlier Compliance Order and Notice of Potential Penalties to address the violations contained in the notice. Meanwhile, Pioneer filed Chapter 11 bankruptcy proceedings, channeling all claims and liabilities—including Clean Water Act violations—through the bankruptcy proceedings.

Notice of Louisiana Environmental Action Network re: Town of Addis (Notice of violations and intent to file a citizen suit under the Clean Water Act.) (February 5, 2003)

Within two months after the Clinic issued the notice of violations to Addis, the Department of Environmental Quality assessed a penalty against the town for its Clean

Water Act violations. Additionally, the town spent approximately \$1,500,000 to improve its wastewater treatment facility. Since improvements were completed in March 2003, Addis has substantially complied with its Clean Water Act obligations.



Andrew Sockol, Marylee Orr, Joshua Hansen, & Edward Dimayuga

Notice of Louisiana Environmental Action Network re: Town of Lutcher (Notice of violations and intent to file a citizen suit under the Clean Water Act for consistently violating its permit limits for Total Suspended Solids and chemicals that affect Biological Oxygen Demand.) (February 5, 2003)

Lutcher is a small community along the Mississippi River near Baton Rouge. The town consistently violated its permit limits for Total Suspended Solids and chemicals that affect Biological Oxygen Demand because of an inadequate wastewater treatment system. In light of the communities' concerns and willingness to work to solve its problems, the Clinic worked with Lutcher officials to identify ways to improve the town's wastewater treatment capacity. In particular, Clinic student attorneys provided information and helped the town identify low interest loans—

through programs like the Louisiana Clean Water State Revolving Fund—to fund improvements to its wastewater treatment facility. The Clinic continues to monitor the town's efforts to resolve its wastewater problems and comply with the Act

Notice of Louisiana Environmental Action Network re: CII Carbon, L.L.C. (Notice of violations and intent to file a citizen suit under the Clean Water Act for exceeding its permit limits for substances that contain or affect Total Suspended Solids, Chemical Oxygen Demand, Oil and Grease, Fecal Coliform, pH, and Biological Oxygen Demand.) (February 5, 2003)

Notice of Louisiana Environmental Action Network re: Daybrook Fisheries (Notice of violations and intent to file a citizen suit under the Clean Water Act for exceeding its permit limits substances that contain or affect Total Suspended Solids and Biological Oxygen Demand.) (February 5, 2003)

Notice of Louisiana Environmental Action Network re: Honeywell International, Inc. (Notice of violations and intent to file a citizen suit under the Clean Water Act for exceeding its permit limits of substances that contain or affect pH, Total Suspended Solids, and Fluoride.) (February 5, 2003)

Notice of Louisiana Environmental Action Network re: T.T. Coatings, Inc. (Notice of violations and intent to file a citizen suit under the Clean Water Act for exceeding its permit limits of Total Purgeable Halocarbons.) (February 5, 2003)

Comments on behalf of the Louisiana Environmental Action Network, Save Our Wetlands, Louisiana Audubon Council, and Rudy Mills re: LDEQ's list of impaired waters (Commenting on LDEQ's proposed draft 2002 303(d) list of waters requiring a Total Maximum Daily Load (TMDL) and requesting that LDEQ modify the list to comply with the Clean Water Act.) (December 16, 2002)

Notice of Nine Environmental Organizations re: EPA's failure to respond to the petition to withdraw the state's LPDES Program (60-day notice of intent to bring a citizen suit to force EPA to rule on the citizens' petition to withdraw Louisiana's authority to implement a water program under the Clean Water Act because of the program's serious flaws.) (December 12, 2002)

In February 2003, EPA Headquarters took the unusual step of publicly issuing a demand letter to LDEQ that outlines specific "performance measures" which LDEQ must implement to maintain authority over the water program. These measures have specific deadlines, with the last deadline in December 2003. In addition, EPA Region 6 sent a letter to the Governor's Advisory Task Force on Funding and Efficiency of the Louisiana Department of Environmental Quality ("task force") with recommendations that the task force should consider adopting. In response, on behalf of the petitioners, the Clinic sent a letter to EPA outlining additional areas that LDEQ must improve to maintain delegation of the water program.



Student Attorney Casey Youn & Governor Mike Foster

Currently, EPA is conducting quarterly audits of LDEQ's progress and is updating the petitioners and Clinic on its findings. In addition, EPA has stationed an EPA employee in the LDEQ permitting section for the next six months.

Comments on behalf of the Louisiana Environment Action Network regarding the general permit for water discharges resulting from implementing Corrective Action Plans for cleanup of Petroleum UST Systems (Suggesting improvements to the benzene standard in LDEQ's proposed general permit.) (November 26, 2002)

Supplemental petition on behalf of nine organizations re: Withdrawal of the National Pollutant Discharge Elimination System Program Delegation from the State of Louisiana (Updating the citizen groups' petition to U.S. EPA to rescind its delegation of the Clean Water Act's permitting program to the Louisiana Department of Environmental Quality with new information about the LDEQ's failure to administer the program in compliance with the Clean Water Act.) (September 17, 2002)

The Clinic continued to work on the following cases filed prior to the 2002 - 2003 school year:

Rudy Mills, Louisiana Audubon Council, and Sierra Club v. Louisiana Department of Environmental Quality, No. 486412 (19th Jud. Dist., Aug. 1, 2001) After Judge Calloway reversed and remanded a Water Quality Certification for the Hancock County's Port and Harbor Commission on June 6, 2002, without further public notice or opportunity for comment, LDEQ re-issued the Water Quality Certification in September 2002 for the dredging project on Little Lakes. On behalf of Rudy Mills, Louisiana Audubon Council, and Sierra Club, the Clinic challenged this action seeking reversal of the certification because LDEQ did not perform the proper environmental assessment mandated by the Louisiana Supreme Court and because, if it claimed to conduct such an analysis, the agency never provided public notice and a chance to comment on the analysis.

In December 2002, the Army Corps of Engineers issued a Clean Water Act section 404 permit based on the Water Quality Certification. The 404 permit authorized the dredging activity. Because the Harbor Commission was anxious to complete the project and faced no legal impediment to doing so, the Clinic sought a stay of the certification to halt the permitted dredging.

This issue was heard January 17, 2003. After presentation of testimony and argument, the Court denied the stay. The Harbor Commission quickly proceeded to perform the dredging. The Clinic is currently negotiating with the Commission in an attempt to reach an agreement that no further dredging will occur without the Commission obtaining a new water quality certification and 404 permit, and the parties are exploring alternative routes that would eliminate the need to use, or dredge, Little Lake for shipping purposes.

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 grassroots organizations to effectively participate in wetlands permitting, regulation, and enforcement. On behalf of its clients, the Clinic performed the following work within its Endangered Wetlands Initiative during the 2002 – 2003 school year:



Loretto O'Reilly, Hazel Sinclair, and Kelly Fitzmaurice v. Louisiana Department of Environmental Quality, No. 509564 (19th Jud. Dist. La., July 9, 2003) (Lawsuit challenging LDEQ's issuance of a water quality certification for a proposed subdivision that would destroy 85 acres of wetlands in St. Tammany Parish and negatively impact the water quality of the Little Tchefoncté River and Timber Branch Creek.)

Comments on behalf of Louisiana Audubon Council re: Jean Lafitte dredging project (Opposing a coastal consistency permit for the U.S. Army Corps of Engineers' plan to dredge the Bayou Segnette Waterway because of potential harmful environmental impacts.) (April 23, 2003)

Comments on behalf of 9 individuals re: Timber Branch II subdivision (Opposing LDEQ's issuance of a water quality certification for a subdivision in St. Tammany Parish that would destroy 85 acres of wetlands, a proposal previously objected to by EPA.) (March 24, 2003)

Comments on behalf of the Louisiana Audubon Council, the Gulf Restoration Network, Sierra Club - New Orleans Group, and Save Our Wetlands re: the scope of the environmental impact statement to be prepared for the proposed St. Charles International Airport (Requesting that the Army Corps of Engineers comprehensively identify and assess alternatives to the project, as well as its direct, indirect, and cumulative impacts.) (March 21, 2003)

Comments on behalf of Louisiana Audubon Council, Sierra Club - Delta Chapter, Gulf Restoration Network, and League of Women Voters of New Orleans re: Jean Lafitte dredging project (Requesting that the U.S. Army Corps of Engineers prepare a comprehensive Supplemental Environmental Impact Statement before proceeding with dredging the Bayou Segnette Waterway because of potential harmful environmental impacts on the Jean Lafitte National Historical Park.) (August 19, 2002)

The Clinic continued to work on the following cases filed prior to the 2002 - 2003 school year:

Comments on behalf of the Louisiana Audubon Council, Sierra Club - Delta Chapter, and the Gulf Restoration Network re: the draft and final Feasibility Report/Programmatic Environmental Impact Statement for the Morganza to the Gulf levee project (Challenging a 72-mile levee project in southern Louisiana, which could have serious adverse impacts on over 4,000 acres of wetlands.) (February 21, 2002, and July 3, 2002, respectively)

Community Preservation Program

The Community Preservation Program helps the Clinic's clients defend their communities and environment from the damage of poorly planned development activities in Louisiana. These activities may include landfills, highway projects, and shopping centers that threaten the historic value, cultural fabric, and environmental integrity of communities. The Community Preservation program addresses a variety of issues such as land use policies, environmental justice, historical preservation, hazardous waste, and sprawl with legal and outreach assistance. On behalf of citizens and community organizations, the Clinic has helped communities in the following cases:



Pam Dashiell, client, and Gerald Mead, student attorney, filing a brief at the 5th Circuit

Concerned Citizens Coalition v. Federal Highway Administration, No. 03-292-A-M2 (M.D. La., Apr. 16, 2003) (Lawsuit 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.)

Comments on behalf of St. James Citizens for Jobs and the Environment, Louisiana Environmental Action Network, Ms. Albertha Hasten, Ms. Diana Honor, Ms. Helen Simmons, and Ms. Mercshondria Honor re: FTM & Associates permit application for the land application of sewage sludge near Romeville, St. James Parish (Opposing issuance of the permit because of unreasonable health risks, the lack an adequate analysis required by the State constitution, and inconsistencies with relevant regulations.) (March 24, 2003)

Notice of the Gulf Restoration Network and the Louisiana Environmental Action Network re: the U.S. Army Corps of Engineers' Inner Harbor Navigational Canal Project (Notice of intent to file suit under the Resource, Conservation, and Recovery Act for the abatement of the hazard to public health and the environment created by the Army Corps' commencement of a project to dredge the Inner Harbor Navigational Canal without first developing adequate plans for safe management of contaminated sediments.)

Holy Cross Neighborhood Association, Louisiana Environmental Action, and Gulf Restoration v. U.S. Army Corps of Engineers, No. 03-0370 (E.D. La., Feb. 6, 2003) (Lawsuit 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.)

In re: Waste Management of Louisiana, L.L.C. Woodside Landfill No. 504269 (19th Jud. Dist., Feb. 5, 2003) (Challenging an LDEQ permit issued after the permittee bribed LDEQ employees.)

Comments on behalf of the Concerned Citizens Coalition of Lafayette re: I-49 Connector through Lafayette (Opposing the construction of an elevated highway through the heart of Lafayette's historic district due to the potential negative impacts to a National Historical District, residents in the surrounding neighborhoods, and the environment.) (October 31, 2002)

Comments on behalf of Oakville Community Action Group and Louisiana Environmental Action Network re: expansion of Industrial Pipe's Riverside Landfill in Oakville, Louisiana (Opposing Industrial Pipe's application to the U.S. Army Corps of Engineers for a section 404 Clean Water Act permit because plans to expand the Riverside Landfill into undeveloped wetlands does not avoid or minimize impacts to the wetlands.) (September 9, 2002)

Comments on behalf of the Oakville Community Action Group and the Louisiana Environmental Action Network re: expansion of Industrial Pipe's Riverside Landfill in Oakville, Louisiana (Opposing Industrial Pipe's application to LDEQ for a water quality certification for a proposed expansion of its construction and demolition debris landfill into wetlands.) (August 15, 2002)

Comments on behalf of the Oakville Community Action Group and the Louisiana Environmental Action Network re: expansion of Industrial Pipe's Riverside Landfill in Oakville, Louisiana (Opposing Industrial Pipe's application to Plaquemines Parish for a coastal use permit to destroy wetlands for a non-wetland dependent use in direct conflict with the Coastal Zone Management Act.) (August 12, 2002)

The Clinic also worked on the following cases that were filed prior to August 2002:

Title VI complaint to the U.S. Environmental Protection Agency on behalf of the Oakville Community Action Group and the Louisiana Environmental Action Network re: Louisiana Department of Environmental Quality's discriminatory practices against the Oakville community (Environmental justice petition seeking investigation of LDEQ's discriminatory practices regarding its oversight of the Industrial Pipe landfill. The Clinic continues to press the Title VI complaint and has assisted EPA in its evaluation of LDEQ's Title VI compliance.) (May 22, 1996)

Appeal on behalf of the Coalition of Louisiana Animal Advocates re: U.S. Army Efforts to eradicate wild horses in the Kisatchie National Forest (5th Cir. November 19, 2001) (Challenging the district court's dismissal of an appeal claiming violations of the Wild Horses and Burros Act and the National Environmental Protection Act). The Coalition

and the government entered into a settlement requiring that the U.S. Army accept public comments before taking any action to remove the horses from the Kisatchie National Forest.

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.)

Speaking Engagements & Outreach



The Tulane Environmental Law Clinic's display at the Community Monitoring Fair in New Sarpy, LA

- Adam Babich met with officials from the Kazakhstan environmental ministry on August 18, 2003.
- Rebecca Dayries spoke to an undergraduate class on August 4, 2003 at Loyola University about environmental justice in Louisiana and the work the Clinic does on behalf of low-income and minority communities.
- Adam Babich participated in a national legal strategy meeting in July 2003.
- Adam Babich met with six U.S. State Department visitors from Bulgaria on June 6, 2003. The group of six environmental experts and decision-makers were in the U.S. to learn about environmental policy and practice.
- John Suttles and Adam Babich met with a group of attorneys in May 2003 from the Lawyer's Committee for Civil Rights to discuss environmental justice issues.
- On May 15, 2003, Adam Babich and Rebecca Dayries met with Dr. Pamela Nath of Bluffton College and twelve of her students during their visit to New Orleans to learn more about social and environmental justice.
- Adam Babich served as a panelist with Charles J. Sheehan, Acting Regional Counsel, Region 6, Environmental Protection Agency and Terry Ryder, Deputy Chief of Staff, Office of the Governor, LA at the May 14, 2003 Environmental Law Roundtable Dinner hosted by the LSU Law Center. The topic was "Storm Clouds over Louisiana: Environmental Challenges for the Next Governor."
- Adam Babich published an essay in an American Bar Association committee newsletter to highlight the need for an audit of the state's emission reduction credit

bank. The article is: *The Sting: How Louisiana's Emission Credit Trading System Dirties the Air*, Second Generation Issues Comm. Newsl., May 2003, at 11.

- Rebecca Dayries and Esther Boykin met with students from William and Mary College conducting research on environmental justice on May 5, 2003.
- Adam Babich spoke about environmental law at the Women for a Better Louisiana's April 23, 2003 meeting in New Orleans.
- Adam Babich delivered an address at the 2003 National Petrochemical and Refiners Association *National Environmental and Safety Conference* on April 23, 2003. A summary of the speech, "Environmental Advocacy, Where Are We and Where Are We Going," was featured in the April 28, 2003 edition of *Octane Week*.
- The outreach program prepared and distributed a press release on April 15, 2003 announcing the Concerned Citizens Coalition federal challenge to a proposed highway project through a nationally recognized historic district in Lafayette, Louisiana. The lawsuit received substantial news coverage.
- Adam Babich, presented his article, "The Wages of Sin: The Violator-Pays Rule for Environmental Citizen Suits" at the Widener University School of Law's "Environmental Citizen Suits at Thirtysomething: A Celebration & Summit" on April 4, 2003.



Staff Attorney, Karla Raettig, giving a presentation at a citizen workshop

- John Suttles assisted with the planning of the April 4-5, 2003 citizen workshop on "Reviewing and Commenting on New Source Review Permits on Major Air Pollution Sources." Karla Raettig gave two presentations: "Public Participation Opportunities" and "Preparing for Permit Review." The workshop was co-sponsored by the U.S. Environmental Protection Agency and Earthday Coalition.
- Adam Babich met with a group of ten lawyers and judges from Middle-Eastern Islamic countries to discuss common and civil law and a comparison of the Napoleonic Code and the Islamic Sharia in March 2003.

- The outreach program participated in the March 2003 Tulane Environmental Law & Policy Conference, which brought together over 200 activists, policy-makers, attorneys, students, and industry representatives to discuss hot topics in environmental law and policy.
- The outreach program prepared and distributed a press release on February 6, 2003 announcing the filing of the Holy Cross Neighborhood Association's lawsuit against the U.S. Army Corps of Engineers challenging its Inner Harbor Navigational Canal Project under the Resource, Conservation, and Recovery Act.
- The outreach program prepared and distributed a press release on February 5, 2003 publicizing LEAN's filing of "notice of violation" letters to seven polluters along the Mississippi River for their consistent violation of the Clean Water Act. This announcement also received extensive media coverage throughout the state.
- The outreach director coordinated a meeting on January 22, 2003 with student and staff attorneys, representatives of EPA Region 6's water permitting division and the Clinic's clients about the Agency's proposed policy to streamline its oversight of LDEQ's permitting activities.
- The outreach program prepared and distributed the January 13, 2003 press release announcing that seven organizations sent EPA a 60-day notice of intent to sue it for failure to respond to their petition requesting that EPA audit Louisiana's emission reduction credit bank. It received considerable media coverage throughout the state.
- The outreach program prepared and distributed a press release on December 16, 2002 announcing LEAN's 60-day notice of intent to sue EPA for failing to respond to the water petition. This notice received significant coverage in the state and in the *Bureau of National Affairs* Environment section.
- The Clinic co-sponsored the Mississippi River Basin Alliance's annual conference held November 16, 2002 at Tulane University.
- The Clinic staff attended and participated in the Louisiana Environmental Action Network Annual People's Conference November 9, 2002. The Clinic had a display highlighting the Clinic's services and actions taken on behalf of LEAN in the last year.
- Rebecca Dayries facilitated two strategy meetings on October 31, 2002 and April 10, 2003 with the Louisiana Environmental Action Network's board members and staff, focusing on the group's Clean Air Act cases.
- The Clinic co-hosted the Louisiana Bucket Brigade's Community Monitoring Roundtable discussion on October 21, 2002 with representatives of the stakeholders mentioned above. The roundtable met its discussion goals to: (1) share information about the current state of air monitoring in Louisiana's fenceline communities; (2) discuss strengths and challenges of creating an optimum system for ambient monitoring of air toxics and particulate matter; and (3) discuss possibilities for establishing an on-going dialogue and partnership on air monitoring among interested groups.

- Rebecca Dayries assisted the Louisiana Bucket Brigade with the preparation of the first-of-its-kind Community Monitoring Fair held in New Sarpy, LA on October 19, 2002, which brought together representatives of community groups, environmental groups, government agencies, academia, and the petrochemical industry to learn about state-of-the-art technologies for monitoring air quality. The Clinic attorneys and outreach program prepared a display and a handout on the legal importance of citizen monitoring under the Clean Air Act.



Student attorneys at Alligator Bayou

- The outreach director coordinated a press conference about the water petition on September 17, 2002 in Baton Rouge, LA. This event attracted extensive media coverage in the local and state newspapers and on the evening television news.
- Karla Raettig and student attorneys aided citizen groups in their August 12, 2002 meeting with EPA regarding the groups' petition for reform of Clean Air Act and Resource, Conservation, and Recovery Act implementation in Louisiana.
- The Clinic began revising the Clinic's 1990 *Citizen Guide to Environmental Activism in Louisiana* to be more user-friendly and up-to-date. The Clinic anticipates completing the guide in the fall 2003.
- The Outreach Program provided clients and contacts with timely and accurate information on environmental issues to enable them to participate directly in the environmental decision-making process, including public meetings/hearings, rulemaking, agency decisions on permits, enforcement activities, news articles, conferences, and workshops.
- Clinic staff participated in regular conference calls with clients regarding LDEQ enforcement and permitting problems.
- Rebecca Dayries facilitated monthly wetlands strategy group meetings with a network of organizations and activists dedicated to protecting Louisiana's wetlands and restoring Louisiana's coast. Staff and student attorneys attended these meetings to update clients on their wetlands cases.
- The outreach program coordinated community strategy meetings with the Holy Cross Neighborhood Association and other groups regarding the Industrial Canal expansion.

Major Accomplishments

- Forced EPA to obey Congress' command to enhance safeguards to protect the public from ozone pollution;
- Reduced air emissions from facilities in overburdened environmental justice communities;
- Produced a settlement agreement to require Orion Refining Corporation to comply with Clean Air Act provisions;
- Increased federal oversight of Louisiana's water permitting and enforcement program;
- Empowered grass roots citizen organizations to negotiate directly with Louisiana's governor about Clean Water Act implementation;
- Enabled grass roots citizen organizations to enforce the Clean Water Act where responsible agencies have ignored their responsibilities to enforce the law;
- Compelled LDEQ to issue enforcement actions against Clean Water Act violators;
- Successfully challenged a solid waste landfill permit;
- Forced the U.S. Army to conduct an environmental assessment prior to removing the wild horses in the Kisatchie National Forest;
- Pressured LDEQ to improve public access to public records at LDEQ office;
- Empowered citizens to enforce state and federal hazardous waste regulations;
- Increased government agency review of harmful development projects that impact wetlands; and
- Educated citizens about their right to participate in environmental permitting and enforcement decisions.

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