

## Recent Accomplishments

**Court rejects expansive reading of the Clean Water Act's "administrative penalties" bar to citizen enforcement:** On November 16, 2009, the U.S. District Court for the Southern District of Mississippi rejected a developer's argument that an Army Corps of Engineers' Notice of Violation protected the developer from citizen enforcement for destroying wetlands in Hancock County, Mississippi. Interpreting the Clean Water Act's "administrative penalties" section (33 U.S.C. § 1319(g)), the Court first held that even if government administrative enforcement barred a citizen suit for civil penalties, "[a] citizen would still be free to seek injunctive relief." Next, the court ruled that the Corps' Notice of Violation did not "commenc[e] a 1319(g) administrative civil penalty action." The court explained that to institute administrative civil penalty proceedings, the Corps "would have had to implement those procedures set forth in Section 1319(g)(2-5), which includes notice of the proposed civil penalties . . . ." The Corps "did not do so." The court concluded: "Because no administrative action for civil penalties was ever commenced by the Corps or EPA, the Section 1319(g)(6) bar is inapplicable." *Gulf Restoration Network v. Hancock County Development, LLC*, 08-cv-00186 (S.D. Miss., Nov. 16, 2009) (157-019)

**Entergy moves to Cancel Coal-burning power plant project:** On October 27, 2009, Entergy Louisiana, LLC moved to cancel its plan to convert its Little Gypsy power plant to a coal and petroleum coke burning facility. Earlier (on May 22, 2009)—following more than 18 months of litigation and administrative proceedings—the Louisiana Public Service Commission had approved "a longer-term suspension" of the project for at least three years. Coal-fired power plants emit large amounts of carbon dioxide—a pollutant strongly associated with global warming. TELC represented the Alliance for Affordable Energy, Louisiana Environmental Action Network, Sierra Club, Gulf Restoration Network, and an individual in these proceedings. (126-016, 126-016.1, 126-016.3, 126-116.2A)

**Mercury contamination case settled:** On July 2, 2009, TELC settled a case seeking cleanup of mercury contamination in the Monroe Gas Field in Union, Ouachita, and Morehouse parishes, Louisiana. The mercury—a neurotoxin—leaked from manometers that measure pressure in gas pipelines. The defendant, EnerVest Operating, L.L.C., owned more than 400 mercury manometers in the area, each containing up to eight pounds of mercury. Many of these meters leaked, some leaving visible accumulations of mercury on the ground. The Louisiana Department of Health and Hospitals has issued fish consumption advisories for "unacceptable levels" of mercury detected in freshwater fish species in the area. After TELC filed the lawsuit, EnerVest entered into a voluntary cleanup agreement with the Louisiana Department of Environmental Quality, setting a cleanup standard of 2.3 parts per million (ppm). The stipulated judgment in this case reduces the average cleanup standard at each meter site to 1.5 ppm and to 1 ppm for sites located within 100 feet of a perennial stream or a tower designed to elevate a meter in a flood-prone area. EnerVest has also removed its mercury meters from the Monroe Gas Field. TELC represented the Gulf Restoration Network, Louisiana Audubon Council, Louisiana Environmental Action Network, and Sierra Club in this case. (101-092)

**Clean Water Act enforcement case settled:** TELC settled *Save Our Wetlands v. Terrebonne Levee and Conservation District*, No. 08-2159 (E.D. La., Settled Feb. 11, 2009). The District had constructed a reach of the Morganza-to-the-Gulf Levee Project based on a U.S. Army Corps of Engineers' "Environmental Assessment," but without a Clean Water Act permit. The consent decree makes the mitigation provisions of the Environmental Assessment enforceable in federal court. (163-001)

**Wetland permit for landfill expansion revoked:** In *Oakville Community Action Group v. Plaquemines Parish Council*, No 2008-CA-1286 (La. App. 4th Cir., Feb. 18, 2009), the Court of Appeals "revoke[d] the coastal use permit that the [Plaquemines Parish] Council issued" for expansion of the Industrial Pipe landfill into coastal wetlands. (104-014)

## Selected Historical Accomplishments

**Asbestos burn experiment halted:** On behalf of Concerned Citizens Around Murphy, TELC and Public Justice provided a *Notice of Intent to Sue* to EPA and others alleging that EPA's proposed experimental asbestos burn in St. Bernard Parish would violate the Clean Air Act. (June 3, 2008). In response, EPA agreed to drop plans to burn regulated asbestos containing material during the experiment. (161-004)

**Refinery lawsuit settled:** On behalf of its clients, TELC negotiated a settlement of *St. Bernard Citizens For Environmental Quality and Louisiana Bucket Brigade v. Chalmette Refining, LLC*, No. 04-0398 (Eastern District of Louisiana, June 30, 2008) During the course of that lawsuit, the Court found the defendant liable for more than 2600 Clean Air Act violations. (151-001)

**Cypress wetlands protected:** TELC appeared as amicus in a case that rejected a U.S. Army Corps of Engineers' exemption for a cypress harvesting operation in wetlands from the Clean Water Act's permitting system because the Corps failed to show that the tree harvesting operation qualified under the Act's "on-going silviculture" exception. *Ogeechee-Canoochee Riverkeeper, Inc. v. U.S. Army Corps of Engineers*, 559 F.Supp.2d 1336 (S.D. Ga. May 27, 2008) (126-015)

**Zoning decision vacated:** In *Gertown Neighborhood Watch v. Board of Zoning Adjustments*, No. 07-14825 (New Orleans Civil Dist Ct.), TELC's clients appealed a New Orleans Board of Zoning Adjustment decision that granted a zoning variance for reopening of a bar associated with stabbings, shootings, vandalism, drugs, and prostitution in a lower-income New Orleans neighborhood. The City stipulated to an April 2, 2008 judgment vacating the variance. (160-001)

**Outstanding Natural Resource Waters protected:** On behalf of the Louisiana Environmental Action Network (LEAN) and an individual, TELC appealed a LDEQ general water permit for discharges from Light Commercial Facilities (19th Jud. Dist., No. 546678, Aug. 25, 2006) that allowed discharges to outstanding natural resource waters. On September 18, 2007, LDEQ agreed to a voluntary remand for removal of the authorization to discharge to outstanding natural resource waters from the permit. Similarly, on September 19, 2006, TELC filed comments for the Gulf Restoration Network and LEAN objecting to a draft permit for a portable treatment unit that would allow discharges to *all* waters of the state. LDEQ responded on February 26, 2007 by agreeing to prohibit discharges to outstanding natural resource waters. (101-056, 157-002)

**Landfill permit vacated:** In re: *Waste Management of Louisiana, LLC, Woodside Landfill Air Permitting Decisions*, No. 529640 (La. App. 1st Cir., Aug. 22, 2007), the court vacated a Clean Air Act permit for the Woodside landfill where LDEQ had purported to waive "prevention of significant deterioration" review. During the course of the litigation, the landfill's owner and operator admitted that "the Court of Appeal's vacating of Woodside Landfill's entire Title V operating permit will effectively result in . . . shutdown of landfill operations" and that "LDEQ will be required to reconsider all portions of the Title V permit." (101-093)

**Mercury emissions eliminated from Louisiana chlor-alkali plants:** Both chlor-alkali plants in Louisiana have now converted from "mercury-cell" technology to production processes that do not release mercury. TELC petitioned LDEQ on April 13, 2005, to reopen a permit for PPG Industries' chlor-alkali plant in Lake Charles to examine conversion to a mercury-free process. On August 4, 2005, PPG announced it would switch to "membrane cell" technology to eliminate use of mercury in the Lake Charles plant. Also, beginning on April 7, 2005, TELC participated in an LDEQ enforcement action about Pioneer Companies, Inc.'s St. Gabriel plant, pushing Pioneer for a shift to non-mercury emitting processes. Pioneer announced that it would convert its St. Gabriel plant to a mercury-free process on January 30, 2007. TELC represented a broad coalition of clients on these matters and worked in conjunction with other organizations pressing for elimination of mercury in Louisiana's chlor-alkali plants. (101-061, 101-081)

**U.S. Army Corps' wetlands cumulative impacts and mitigation analyses rejected:** The Fifth Circuit upheld a challenge by three concerned citizens to the U.S. Army Corps of Engineers' approval of a

proposed subdivision in St. Tammany Parish that would destroy 39.5 acres of forested wetlands based on a finding of “no significant impact.” The Fifth Circuit rejected the Corps’ finding because the Corps failed “to articulate how the mitigation measures will render the adverse effects insignificant and to consider the cumulative effects of the project, area urbanization, and permits issued to third parties.” 477 F.3d 225, 227 (5th Cir. Jan. 24, 2007) (110-004)

**Agency to comply with Endangered Species Act:** TELC represented Sierra Club as amicus in an Endangered Species Act case in which the court ordered the U.S. Department of Interior to designate critical habitat for protection of the Louisiana Black Bear. *Schoeffler et al v. Kempthorn*, No. 6:05-cv-01573 (W.D. La. June 26, 2007). (126-013)

**Industrial Canal project enjoined pending NEPA compliance:** On October 6, 2006, the court in *Holy Cross Neighborhood Association, Louisiana Environmental Action Network, and Gulf Restoration Network v. U.S. Army Corps of Engineers*, 455 F. Supp.2d 532 (E.D. La.), enjoined the Corps of Engineers’ plan to dredge contaminated sediments from the Industrial Canal in New Orleans and to dispose of them in the Mississippi River and adjacent wetlands. (112-002)

**Unpermitted landfill closed:** In *Waste Management of Louisiana v. City of New Orleans*, No. 06-11056 (Civil Dist. Court), TELC intervened on behalf of Citizens for a Strong New Orleans East and others to support a City of New Orleans cease and desist order that shut down the Chef Menteur landfill—located between a lower-income Vietnamese-American community in East New Orleans and Bayou Sauvage National Wildlife Refuge. The court denied the landfill operator’s motion for a temporary restraining order on August 15, 2006. (101-099)

**50-Year landfill contract vacated:** In *George Washington, Concerned Citizens of St. Helena Parish and Louisiana Environmental Action Network v. St. Helena Parish Police Jury*, No. 18370 (21st Jud. Dist., June 7, 2005), the court set aside a 50-year contract for a landfill in St. Helena Parish as beyond the powers of the police jury and for violations of Louisiana’s Open Meetings Law. (101-077)

**Sewage sludge dumping stopped:** On behalf of St. James Citizens for Jobs and the Environment, Louisiana Environmental Action Network, and an individual, TELC, on November 23, 2004, served FTM and Associates, Inc. and LDEQ with a notice of intent to file a citizen suit about FTM’s spraying of sewage sludge from Kenner on agricultural fields (near residences) in St. James Parish. One week later, LDEQ announced that FTM and Associates, Inc. would stop spreading the sludge by December 31, 2004. (107-014)

**Environmental Analysis required before destruction of wetlands:** On March 5, 2004, the 19th Judicial District court ordered LDEQ “to prepare an environmental analysis in compliance with . . . La. Const. Art. IX § 1” before issuing a CWA § 401 water quality certification for destruction of 39.5 acres of wetlands in St. Tammany Parish. Judgment *O’Reilly v. Louisiana Department of Environmental Quality*, No. 509564 (19th Jud. Dist. Mar. 5, 2004). Applying LDEQ’s constitutional duty as public trustee to water quality certifications provides the state with additional information and authority to slow destruction of Louisiana’s wetlands. (110-001)

**Clean Water Act implementation improved:** The Clinic filed a petition in October 2001 on behalf of the Louisiana Environmental Action Network and other community groups asking EPA to withdraw Louisiana’s authority to administer the Clean Water Act discharge-permitting program. After an investigation, EPA responded with a February 14, 2003 demand letter to LDEQ, citing “serious concerns” with the program and announcing a significant increase in federal oversight. In May 2004, EPA announced that LDEQ had met the performance measure requirements. (101-044)

**Inter-pollutant air emission trading scheme withdrawn:** In *Louisiana Environmental Action Network v. EPA*, No. 02-60991 (5th Cir.), LEAN appealed EPA’s approval of a Louisiana scheme to trade reductions in oxides of nitrogen (NOx) emissions for increased emission of volatile organic compounds (VOCs). EPA asked the Court to vacate that approval after TELC filed its opening brief. The court vacated the inter-pollutant trading scheme on November 20, 2003. (101-040)

**NEPA process required before removal of wild horses from Kisatchie Forest:** In *Coalition for Louisiana Animal Advocates v. U.S. Department of Agriculture*, No. 01-31361 (5th Cir.), the parties entered into a Partial Settlement Agreement on July 25, 2002 that required the U.S. Army to refrain from roundup and removal of the Kisatchie horses until completing an Environmental Impact Statement or Environmental Assessment under the National Environmental Policy Act. (137-001)

**Stormwater violations abated:** After receiving TELC's notice of intent to sue about stormwater violations at a New Orleans dairy, the facility's owner provided a June 14, 2001 letter identifying corrective action taken in response to the notice and inviting TELC's clients to inspect the facility. (138-001)

**Air Emission Credit Bank illegalities exposed:** From 1994 until 2000, LDEQ ran a "bank" for trading "emission reduction credits" that violated the Clean Air Act. The Act prohibits allowing emission increases in exchange for offsets that are "otherwise required by this chapter." In response to a LEAN petition to EPA, EPA determined in a December 22, 2000, Order that LDEQ had been allowing offsets based on reductions that the law already required, and based on reductions from levels above baseline limits set by the state. In a related action, EPA reported to a federal court on Oct. 6, 2000 that "it is difficult to access data documenting the amount of valid CAA offset credits" and "there are insufficiencies in the banking database." Joint Motion for Partial Voluntary Remand at 4, Oct. 6, 2000, *Louisiana Environmental Action Network v. EPA*, No. 99-60570 (5th Cir. Oct. 6, 2000) (101-004)

**Public's Right to Challenge Permits Vindicated:** TELC obtained a court ruling that the 30-day period for a citizen's appeal of a Louisiana Department of Environmental Quality permit begins to run only after the citizen receives lawful notice that LDEQ issued the permit. LDEQ's position had been that the public's right to appeal expired 30 days after notice to the applicant. *In the Matter of Natural Resources Recovery, Inc.*, 98-2917 (La. App. 1 Cir. 2/18/2000), 752 So.2d 369. (105-001)

**Cameron Parish Habitat Preserved:** TELC obtained an injunction preventing enforcement of a Cameron Parish Police Jury "grass and weeds" ordinance against the Baton Rouge Audubon Society for a project to restore protective chenier habitat for migratory songbirds and butterflies on 21 lots in the Little Florida Subdivision. *Baton Rouge Audubon Society v. Sandifer*, 97-464 (La.App. 3 Cir. 10/29/97), 702 So.2d 997.

**Shintech construction permit vetoed:** On September 10, 1997, EPA issued an objection to an LDEQ permit to Shintech Inc. for a polyvinyl chloride ("PVC") production plant in a predominately African-American and lower income community in St. James Parish. EPA's veto was a response to a petition that TELC and Greenpeace filed on May 22, 1997, on behalf of the St. James Citizens for Jobs and the Environment, Louisiana Environmental Action Network and others. Shintech abandoned its plans to build in that location. A cable-television movie called "Taking Back Our Town" tells the story of this case. (Lifetime Television broadcast, Dec. 10, 2001) (107-002)