

Recent Accomplishments

Appellate Court Vacates Permit for Oil & Gas Waste Transfer Station: On June 14, 2017, the Louisiana First Circuit Court of Appeal vacated a Louisiana Department of Natural Resources permit for a new Oil and Gas Exploration and Production waste transfer facility near a residential community in Belle River, Louisiana. The Court ruled that the permit resulted in two facilities being authorized to operate in Belle River while the agency had only considered the environmental impacts of operating one. The Court found “that the subject permit is beyond the scope of what was requested and, therefore, was issued in violation of lawful procedure.” TELC represented the Petitioners, Louisiana Environmental Action Network, the Concerned Citizens of Belle River, Hazel Cavalier, and the Atchafalaya Basinkeeper, in the matter. (101-132.2)

Landfill Buffer to Expand: On March 16, 2017, Louisiana’s 19th Judicial District Court entered a consent judgment to resolve a lawsuit about the Industrial Pipe landfill, which is adjacent to the historic, African-American community of Oakville in Plaquemines Parish, Louisiana. The judgment provides for expansion of the buffer between the active landfill and the community from 50 feet to 300 feet, a six-fold increase. It also prohibits storage of waste and cover material in the buffer area. In return, the Judgment provides for expansion of the landfill in areas away from the community. (104-030.1)

U.S. Army Corps of Engineers Narrows a General Permit in Settlement of a Lawsuit regarding Clean Water Act § 404. On January 30, 2017, the Corps partially revoked a general permit (NOD-13) for wetlands destruction associated with construction of oilfield roads, drilling locations, pits, ring levees, and other facilities within the Corps’ New Orleans District. The Corps revoked NOD-13 for use in the Atchafalaya Basin, which is the nation’s largest river swamp and a central part of Louisiana’s Cajun culture. Further, NOD-13 is not available for use elsewhere pending reevaluation by the Corps. The Corps also proposed that a post-reevaluation replacement for NOD-13 exclude projects located within the Atchafalaya Basin. In return, the Atchafalaya Basinkeeper, Louisiana Crawfish Producers Association–West, and Gulf Restoration Network agreed to a February 1, 2017 dismissal without prejudice of their appeal of NOD-13. A “general permit” allows the Corps to approve covered projects without public notice, without an opportunity for public comment, and without a project-specific environmental assessment. (155-017)

Funding for Wetlands Restoration Extended: On February 3, 2017, the U.S. District Court for the Southern District of Mississippi entered an Agreed Order of Dismissal pursuant to a settlement that extended the availability of funds for a wetlands restoration project near Bay St. Louis, Mississippi. The original consent judgment of August 23, 2011 required Hancock County Development, LLC, to donate a parcel of disturbed wetlands to a land trust for restoration and to fund that restoration. That consent judgment required return of unspent funds to Hancock after five years unless the court extended the restoration period or a force majeure delayed restoration. The settlement resolved Gulf Restoration Network’s motion to extend the restoration period. Of restoration funds that the land trust had not used to date, the settlement distributed \$97,000 to the land trust for continued restoration and returned the balance to Hancock. TELC represented Gulf Restoration Network. (157-019)

Appellate Court Affirms Red Snapper Management Provisions: On January 17, 2017, the U.S. Court of Appeals for the Fifth Circuit affirmed a federal district court ruling that upheld Amendment 40 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico. Amendment 40 implements the Magnuson-Stevens Act. It enhances protection of the overfished red snapper and promotes an equitable division of the quota for the recreational sector of the fishery between federally permitted charter boats and private anglers. TELC represented the Charter Fisherman’s Association. *Coastal Conservation Ass’n v. U.S. Dep’t of Commerce*, 846 F.3d 99 (5th Cir. 2017) (182-004)

EPA Orders Reform of Air Permit for Methanol Plant: On August 31, 2016, EPA granted the lion’s share of a petition that TELC submitted on behalf of Sierra Club and the Louisiana Environmental Action Network, objecting to a proposed methanol plant in St. James Parish, Louisiana. The state’s Department of Environmental Quality had issued a Clean Air Act permit to Yuhuang Chemical Inc. for construction of the plant without state-of-the-art technology to limit release of volatile organic chemicals, greenhouse gases,

and other chemicals. The state's theory was that plant emissions would be under the "major source" thresholds that trigger the requirement for state-of-the-art controls under the Clean Air Act's Prevention of Significant Deterioration (PSD) program. EPA, however, found that the state's permit limits are not adequate to keep emissions below thresholds. This is because key permit requirements are not enforceable and the permit does not limit all emissions, such as those during times of malfunction. (126-024.1)

EPA Launches Environmental Justice Investigation: On June 28, 2016, EPA's Office of Civil Rights announced it will investigate allegations of civil rights violations that TELC submitted on behalf of the Ouachita Riverkeeper and Louisiana Environmental Action Network. The "Environmental Justice" complaint alleges that a Clean Water Act decision by the Arkansas Department of Environmental Quality (ADEQ) has the effect of "subjecting individuals to discrimination because of their race" under EPA's civil rights regulations, 40 C.F.R. § 7.35(b). It explains that ADEQ extended a Clean Water Act permit that allegedly allows Georgia-Pacific, LLC to discharge untreated wastewater to Coffee Creek, converting the creek into a toxic flume to carry its waste through a majority African-American area in the community of West Crossett, Arkansas. (These issues have recently surfaced in the press (Emily Crane Linn, *How a Paper Plant in Arkansas is Allegedly Poisoning the People of Crossett*, Newsweek (April 12, 2016)) and in a documentary movie (*Company Town*, Penn Road Productions (2016))). EPA's decision to investigate is not a decision on the merits. (166-002.3)

General Permit for Wetlands Destruction On Hold: On June 8, 2016, a U.S. District Court remanded for reevaluation a regional general permit that allowed roadbuilding and other wetlands fill activities across south Louisiana without public notice or individual environmental review. On December 22, 2015, TELC—on behalf of the Atchafalaya Basinkeeper, the Louisiana Crawfish Producers Association-West, and Gulf Restoration Network—had filed a lawsuit that challenged the U.S. Army Corps of Engineers' November 2014 reauthorization of a general permit known as NOD-13 (for "New Orleans District No. 13"). NOD-13 had expired at the end of 2012. The crux of the suit was the Corps' 1) failure to perform the necessary environmental reviews under the Clean Water Act and the National Environmental Policy Act, 2) failure to determine whether the permit would result in "only minimal" individual and cumulative adverse environmental impacts, 3) violation of the Clean Water Act's five-year term limit for general permits, and 4) violation of regulatory requirements for public notice. The Corps had also continued to authorize projects under the general permit after that permit expired in 2012 and before the Corps reissued it in 2014. The Corps has agreed not to authorize dredge and fill projects under NOD-13 until it has completed reevaluation of the permit. (155-017)

Selected Historical Accomplishments

Federal Agency to Assess Community Exposure to Landfill Contaminants: On March 3, 2016, the Agency for Toxic Substances and Disease Registry (ATSDR) agreed to design and implement a hydrogen sulfide air-monitoring program in response to a petition that TELC submitted on behalf of the Oakville Community Action Group. The monitoring program concerns impacts of emissions from the Industrial Pipe Landfill on the adjacent African-American community of Oakville in Plaquemines Parish, Louisiana. The landfill has disposal areas located within 100 feet of Oakville residences. (104-035)

Fishing Management Amendment Upheld: On January 5, 2016, a U.S. District Court upheld Amendment 40 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico under the Magnuson-Stevens Act. Amendment 40 benefits members of the Charter Fisherman's Association (CFA) by enhancing protection of the overfished red snapper and by providing for an equitable division of the quota for the recreational sector of the fishery between federally permitted charter boats and private anglers. TELC represented CFA, which intervened to defend the government's promulgation of Amendment 40 in *Coastal Conservation Ass'n v. Dep't of Commerce*, No. 15-cv-1300 (E.D. La., Jan. 5, 2016) (2016 WL 54911). (182-003)

School District Drops Plan to Relocate High School Students to Site of Toxic Waste Dump: Along with Monique Harden of Advocates for Environmental Human Rights (AEHR), TELC served as counsel for the Walter L. Cohen Alumni Association and Sierra Club in a challenge to a controversial plan by Louisiana's

Recovery School District to move students, teachers and staff from the existing Cohen High School building to a rebuilt Booker T. Washington School on the site of a toxic waste dump known as the Clio Street / Silver City Dump. In the 1940s, the City built the original Booker T. Washington School on that dump for predominately African – American students. That school closed in 2005, after Hurricane Katrina. On August 3, 2015, TELC and AEHR sent a Notice of Intent to File Suit under the Resource Conservation and Recovery Act. The Notice alleged hazardous waste violations associated with management of school construction on the toxic waste dump and served as a backdrop to subsequent discussions between the Recovery School District and the Walter L. Cohen Alumni Association. As a result, the District announced on October 21, 2015, that it will rebuild Cohen High School in its current location rather than move students, teachers and staff to the dump site. (185-001)

Court Enters Consent Decree to Settle Lawsuit About Spills from a Coal Loading Terminal to the Mississippi River: On October 7, 2015, the U.S. District Court for the Eastern District of Louisiana signed a consent decree that orders United Bulk Terminals Davant, L.L.C. (UBT) to update its pollution control technology and implement new inspection and monitoring procedures aimed at preventing spills of coal and petroleum coke into the river. The settlement also requires the facility to wet the coal and petroleum coke and stop operating during high wind conditions to reduce the amount of coal and petroleum coke dust blowing into neighboring communities and wetlands. In addition, the decree creates a dispute resolution process to determine whether to require other measures to minimize discharge of coal or petroleum coke to the Mississippi River. UBT also agreed to pay \$75,000 to the Woodlands Conservancy to fund coastal restoration projects, such as non-native plant removal and wetland reforestation. The United Bulk terminal is the largest of five existing coal terminals in Louisiana on the lower Mississippi River. TELC represented the Gulf Restoration Network, Sierra Club, and the Louisiana Environmental Action Network in the litigation. (157-045)

Settlement Lifts Secrecy on an 11-Year Oil Leak in the Gulf of Mexico: On September 3, 2015, TELC's clients--Apalachicola Riverkeeper, Louisiana Environmental Action Network, and the Waterkeeper Alliance—lodged a settlement with Taylor Energy Company, L.L.C., to resolve litigation about a persistent oil leak from a destroyed Taylor platform approximately 11 miles off the coast of Louisiana. Taylor and the U.S. government had been attempting to respond to the leak in secret. They had been basing the response on drastically understated estimates of daily oil flow (4 gallons per day instead of at least 85). The settlement unfortunately will not stop the leak. Nobody currently knows how to do that. TELC's clients adopted a "sunlight as disinfectant" approach, relying on public disclosure to 1) increase chances of an effective solution, and 2) help the government and members of the public more accurately assess the risks of offshore drilling proposals. Taylor withdrew its claims of confidentiality as to most relevant documents and contributed \$400,000 to Louisiana Universities Marine Consortium (LUMCON) to support related research. (101-127)

Court Overturns Agency Decision to Issue Permit for Fracking: On August 10, 2015, Judge Timothy Kelley of the 19th Judicial District Court in Baton Rouge reversed the decision of the Commissioner of Conservation, Louisiana Department of Natural Resources (DNR), to issue a Drilling Permit to Helis Oil & Gas Company, LLC, for its proposal to drill and hydraulically fracture ("frack") through a sole source drinking water aquifer in St. Tammany Parish to produce oil. The court agreed with the Plaintiff—the Town of Abita Springs—that DNR's duty as public trustee of the environment under Article IX, section 1 of the Louisiana Constitution is to analyze the environmental impacts of the project, conduct an alternative sites analysis, and weigh the benefits against the costs. Because the record did not show that the Commissioner had discharged this duty, the court vacated the permit and remanded it to the agency. The Tulane Environmental Law Clinic represented the Town of Abita Springs in this case. (183-001.2)

EPA Disapproves Louisiana's 2014 Clean Water Act Impaired Waters List: On July 21, 2015, pursuant to comments filed by TELC on behalf of the Gulf Restoration Network, the Louisiana Environmental Action Network, the Lower Mississippi Riverkeeper, and the Sierra Club, Delta Chapter, EPA disapproved Louisiana's 2014 list of impaired waters submitted under Section 303(d) of the Clean Water Act. EPA listed the nearshore waters of the Gulf of Mexico as impaired for Dissolved Oxygen due to the Dead Zone, and listed forty other waterbodies identified by TELC's clients as improperly delisted by Louisiana as impaired for minerals. (157-047)

Gopher Frog Habitat Protected: TELC's clients initiated negotiations and collaborations that culminated in purchase of 170.6 acres of gopher frog habitat for preservation by the Land Trust for the Mississippi Coastal Plain. TELC's clients Gulf Restoration Network (GRN) and Center for Biological Diversity (CBD) kicked the process off in 2009 and 2010 with TELC's preparation and issuance of notices of intent to litigate about the Tradition residential development in Harrison County, Mississippi, and an associated sewage treatment plant, under the Endangered Species Act and the National Environmental Policy Act. GRN, CBD and others announced the purchase agreement on May 14, 2015. (157-027 & 157-027.1)

Shell Decides Not to Build Pipeline through Atchafalaya Basin: On May 4, 2015, the Shell Pipeline Company LP informed the Louisiana Department of Natural Resources that it would not build its proposed Westward Ho Project, which was to be a crude oil pipeline originating in St. James, Louisiana, and terminating near Nederland, Texas, a distance of about 204 miles. The Tulane Environmental Law Clinic represented the Atchafalaya Basinkeeper, the Delta Chapter of the Sierra Club, Gulf Restoration Network, and Louisiana Environmental Action Network in submitting comments opposing this pipeline project. (155-016)

Louisiana Department of Natural Resources Conditions Helis Drilling Permit: On December 19, 2014, the Louisiana Department of Natural Resources, Office of Conservation, issued a drilling permit to Helis Oil & Gas, LLC, but conditioned the permit on Helis applying mitigative measures requested by the Town of Abita Springs and the Concerned Citizens of St. Tammany as part of their opposition to Helis's fracking project. Among other measures, the Office of Conservation required Helis to: 1) monitor noise, air, stormwater, and groundwater, including establishing a baseline for these parameters; 2) use a closed loop solids control system with no pits; 3) limit the source of water for fracking purposes to surface waters from private ponds not replenished by groundwater; and 4) employ three strings of casing/pipe. The Tulane Environmental Law Clinic represented the Town of Abita Springs in these proceedings. (183-001)

Drinking Water Audit Exposes Violations: On November 13 2014—pursuant to a TELC-negotiated settlement in *RESTORE v. Beauregard Water Works District No. 3*, No. 12-cv-2602 (W.D. La. May 30, 2014)—an audit report disclosed regulatory violations at a municipal waterworks in Beauregard Parish, Louisiana. Among other violations, the report revealed “numerous instances of lower than allowed chlorine residual values of 0.50 mg/l. Some of these occurred for consecutive days at a time and it is unknown if these conditions were recognized by operations staff as out of compliance. ... There is a pattern of repetitious events to which there is no documented response or correction apparent. There was one incident where there was no sample taken and tested at all.” The Louisiana Department of Health and Hospitals (LDHH) set the minimum .5 mg/l level in an emergency rule to guard against rare but potentially deadly infections by the “brain-eating amoeba,” *Naegleria fowleri*. See *Health Department Enacts Rule to Combat Brain-Eating Amoeba*, NEW ORLEANS TIMES PICAYUNE, Nov. 7, 2013 (2013 WLNR 27968090) (noting, “The emergency rule comes about three months after a 4-year-old [child] ... died in August after contracting the fatal bacteria while visiting St. Bernard [Parish, Louisiana]). The audit report does not speculate about why LDHH failed to discover, or alert the public to, the Water Works' violation of the emergency rule. (170-001)

Alleged Clean Air Act Violations Abated: On about October 31, 2014, Heck Industries, Inc. completed a move of its concrete production facility away from its Moreauville, Louisiana, location to resolve a February 28, 2014, Notice of Clean Air Act violations that TELC submitted on behalf of Sierra Club. The notice alleged that Heck was violating its Clean Air Act permit by failing to control fugitive emissions from concrete loading operations. The notice stressed concerns about the impacts of particulate pollution on children in two nearby schools. Heck has now moved its operations from the Moreauville community to a site in Mansura, Louisiana, that reportedly provides a buffer to minimize offsite impacts. (126-020)

Settlement Requires City of Hattiesburg to Build Wastewater Treatment Plant: On September 29, 2014, the U.S. District Court for the Southern District of Mississippi entered a Consent Judgment settling Gulf Restoration Network's claims against the City of Hattiesburg for violations of the Clean Water Act at the City's wastewater treatment lagoons. The consent judgment requires the City to design and construct a plant that can treat the City's wastewater sufficiently to meet its permit limits and other Clean Water Act

requirements by September 2018. It also requires the City to fund a water quality monitoring station downstream of its discharges to gauge the health of the impacted river. In addition to the consent judgment, GRN negotiated amendments to an agreed order between the Mississippi Commission on Environmental Quality and the City so that the agreed order now imposes stipulated penalties of \$1500 per day against the City should it fail to meet design and construction deadlines for the new plant, and imposes a stipulated penalty for failure to meet the September 2018 compliance deadline of \$2000 a day. The amended order also strengthens the interim permit limits the City must meet until September 2018. The consent judgment incorporates all terms of the amended agreed order, making it enforceable by the federal court. (157-039)

Court Overturns Agency Decision Allowing Storage of Natural Gas in Salt Dome Underneath Lake Peigneur: On September 23, 2014, Judge Comeaux of the 16th Judicial District Court based in New Iberia reversed the decision of the Louisiana Department of Natural Resources to issue a Coastal Use Permit to Jefferson Island Storage & Hub for its proposal to construct and operate two natural gas storage caverns in the Jefferson Island Salt Dome under Lake Peigneur. The court agreed with the Plaintiffs that the DNR should not have issued the permit without first finding that the project would not unreasonably endanger public safety and that the location had foundation conditions sufficiently stable to support the use. Further, the court ruled that DNR's decision violated the agency's Constitutional duty as public trustee of the environment under Article IX, section 1 of the Louisiana Constitution because DNR did not do an environmental impact analysis of the potential impacts of the project. The court stated that DNR should have taken into account, among other things, the implications of the unexplained bubbling in Lake Peigneur and the potential risk of contamination to the Chicot Aquifer. The Tulane Environmental Law Clinic represented the Plaintiffs, including Save Lake Peigneur, Inc., and Louisiana Environmental Action Network, in this case. (172-001.5)

Settlement Prohibits Landfill on Borrow-Pit Site Bordering Environmental Justice Community: On July 14, 2014, the Christian Ministers Missionary Baptist Association of Plaquemines Parish and two Ironton residents settled their claims in two lawsuits with Woodland Borrow Pits, LLC regarding a proposed borrow pit site near Ironton, Louisiana. The settlement provides, among other things: 1) that the site will not be used for a landfill for at least 25 years, 2) that once excavated, the borrow pits will be used as retention ponds and incorporated into the Parish's drainage and flood control system, and 3) a commitment to prevent pond stagnation, provide fencing, and suppress mosquitos and other pests. The Tulane Environmental Law Clinic represented the ministers and residents in the cases. (177-004)

Settlement Requires Audit of Beauregard Parish Drinking Water Supplier: On May 30, 2014, the U.S. District Court for the Western District of Louisiana accepted a settlement of RESTORE's lawsuit against Waterworks District No. 3 of Beauregard Parish about drinking water quality in the parish. RESTORE's lawsuit alleged ongoing violations of the Safe Drinking Water Act. In response, the Water District admitted some violations, but asserted that those violations were wholly in the past. The settlement requires, among other things: 1) an independent audit of the District's operations to identify any current concerns about legal deficiencies, 2) an opportunity for the Auditor to make suggestions for improvements to District operations, and 3) quarterly informational meetings to improve public awareness of District activities. U.S. District Court Judge Patricia Minaldi dismissed the lawsuit but retained jurisdiction to enforce the settlement. TELC represented RESTORE—a grass-roots citizens' organization—in the case, No. 12-cv-2602. (170-001)

Mississippi DEQ revises land application permit to include additional protection for the environment: On April 8, 2014, the Mississippi Department of Environmental Quality issued a final Water Pollution Control permit to Groundworx, LLC, which responds to concerns that Gulf Restoration Network raised during the public comment period on the draft permit. The permit is for spray irrigation of pretreated municipal and industrial wastewater on land surfaces around Hattiesburg, Mississippi. Following GRN's suggestions in the comments, the final permit includes surface water monitoring requirements for area streams, groundwater protection measures, and tighter discharge limits. TELC submitted the comments on GRN's behalf on February 22, 2014. (157-039.1)

EPA objects to illegal Clean Air Act permit: On January 30, 2014, EPA granted in part and denied in part petitions for an EPA objection to Louisiana's Clean Air Act permit for the Nucor facility in Convent, St. James Parish, Louisiana. The Tulane Environmental Law Clinic submitted these petitions on behalf of the

Louisiana Environmental Action Network and Sierra Club on October 3, 2012, May 3, 2011, and June 25, 2010. The Nucor facility, as permitted, comprises a pig iron plant and a direct reduced iron (DRI) plant, both to produce feedstock for steelmaking. EPA granted the petitions because the state's permit 1) fails to control hazardous air pollutants from "charging" operations at approximately 140 coal-fired ovens in the pig iron process, 2) fails to include enough monitoring to ensure compliance with permit requirements that apply to sources of emissions from the pig iron process, and 3) fails to include emission limits to implement the health protection standard for particulate matter of 2.5 microns or less in the DRI process. (101-115.1)

Louisiana DEQ revises Settlement Agreement with ExxonMobil to close loopholes and improve enforceability of injunctive and stipulated penalty provisions: On January 9, 2014, the Louisiana Department of Environmental Quality finalized a Settlement Agreement with ExxonMobil, Baton Rouge, over numerous violations of the Clean Air Act at ExxonMobil's various Baton Rouge facilities, including its Chemical Plant. The Agreement requires ExxonMobil to implement a Spill Prevention Control Plan, to pay penalties and to fund Beneficial Environmental Projects. The Agreement also includes a stipulated penalty provision. TELC submitted comments on behalf of the Louisiana Environmental Action Network and Ms. Stephanie Anthony on the draft agreement on October 13, 2013, addressing the many significant loopholes and laxities in the proposed Agreement. In the final Settlement Agreement, LDEQ responded to a number of the concerns raised in TELC's comments, improving the strength and enforceability of ExxonMobil's obligations under the Agreement. (101-055.1)

Court rules EPA must determine whether numeric nutrient standards are necessary to meet Clean Water Act requirements: On September 20, 2013, a district court granted the plaintiffs summary judgment in *Gulf Restoration Network et al. v. Jackson*, No. 12-cv-677 (E.D. La.) (2013 WL 5328547). The plaintiffs challenged EPA's denial of a petition for rulemaking to establish numeric standards to abate water quality degradation, including the massive low-oxygen "dead zone" in the Gulf of Mexico. EPA had denied the petition without determining whether numeric standards were necessary. The court remanded the decision to EPA, requiring a response within 180 days. TELC was part of a legal team on this case led by the Natural Resources Defense Council. (173-001) (Vacated and remanded, 783 F.3d 227 (5th Cir., 2015).

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 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)

Permit applicants withdraw dredge and fill proposals: In July 2013, the Corps produced documentation evidencing the withdrawal of wetlands dredge and fill permit applications on the following TELC matters: *Comments on behalf of Lake Pontchartrain Basin Foundation, Gulf Restoration Network, Louisiana Environmental Action Network, and Sierra Club-Delta Chapter to the U.S. Army Corps of Engineers* (Objecting to the Corps’ proposed CWA section 404 permit for St. Gabriel Redevelopment Company, LLC, to destroy 17.1 acres of wetlands and replace with a C&D landfill in Iberville Parish) (128-014) (Oct. 19, 2007); *Comments on behalf of the Gulf Restoration Network and Turkey Creek Community Initiatives to the U.S. Army Corps of Engineers* (Objecting to a proposal to permit Harrison County Development Commission to fill 83.7 acres of wetlands within the Bayou Bernard Industrial District in Gulfport, Harrison County, Mississippi) (157-008) (Nov. 16, 2006).

Corps discloses withheld documents: On July 13, 2012, the Corps produced documents it had previously refused to disclose in response to a Freedom of Information Act request related to a landfill application that TELC’s clients opposed. The Corps’ action followed a FOIA lawsuit filed to compel the disclosure. After the Corps’ release of the documents, the citizen groups voluntarily dismissed their lawsuit. TELC filed the action on behalf of the Concerned Citizens of Assumption Parish and the Louisiana Environmental Action Network (E.D. La., Voluntarily Dismissed Aug. 2, 2012)(111-005.2)

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 reinstates 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)

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)

Industrial Canal lock replacement project enjoined: On September 9, 2011, the U.S. District Court for the Eastern District of Louisiana enjoined the U.S. Army Corps of Engineers from continuing the \$1.3 billion Industrial Canal Lock Replacement Project until the Corps complies with the National Environmental Policy Act and the Clean Water Act. The Court granted summary judgment that the Army Corps violated the National Environmental Policy Act and the Clean Water Act by selecting a “deep-draft” plan for the project

without analyzing the impact that closing the Mississippi River Gulf Outlet has on the need for a deep-draft canal. The Court noted, "On its face this seems to be the proverbial bridge to nowhere; namely, constructing a deep-draft lock which will never be used by deep-draft traffic." TELC represented the Holy Cross Neighborhood association, Gulf Restoration Network, Louisiana Environmental Action Network, Sierra Club, and Citizens Against Widening the Industrial Canal in the lawsuit. (2011 WL 4015694) (112-004.1)

Wetlands destruction case settled: On August 23, 2011, the U.S. District Court for the Southern District of Mississippi entered a consent judgment to govern resolution of a Clean Water Act citizen suit about destruction of wetlands and unpermitted stormwater discharges near Bay St. Louis, Mississippi. Hancock County Development, LLC, the defendant, agreed to 1) donate a portion of the disturbed property to a land trust, 2) fund wetlands restoration on the donated property, and 3) pay \$95,000 in civil penalties to the U.S. government. TELC represented the Gulf Restoration Network in the lawsuit. (157-019)

Clean Water Act enforcement case settled: On April 15, 2011, the U.S. District Court for the Eastern District of Louisiana entered a consent judgment that resolved a Clean Water Act enforcement case. The consent judgment prohibits Sun Drilling Products Corporation from discharging process wastewater, instead requiring disposal of this effluent at a permitted treatment facility. The decree also requires Sun Drilling to re-engineer and re-grade its site to control stormwater discharges and imposes limited enhanced stormwater monitoring requirements to confirm the success of control measures. In addition, Sun Drilling agreed to make a donation to Woodlands Conservancy in Plaquemines Parish for its coastal forest restoration project. TELC represented the Louisiana Environmental Action Network in this citizen enforcement action. (101-120)

Oil refinery case settled: On March 18, 2011, the U.S. District Court for the Eastern District of Louisiana granted a joint motion to dismiss a Clean Air Act citizen suit in light of a settlement embodied in a February 16, 2011 Consent Decree in *U.S. v. Murphy Oil*, No. 10-cv-00563 (W.D. Wisc.). The settlement resulted from the participation of TELC's Client, Concerned Citizens Around Murphy, in Global Consent Decree negotiations with EPA, Murphy, the Louisiana Department of Environmental Quality, and the State of Wisconsin. The resulting consent decree includes Murphy's commitment to construct and operate an ambient air monitoring station adjacent to the Meraux Refinery. (161-003)

Company held liable for wetlands destruction: On February 22, 2011, the U.S. District Court for the Southern District of Mississippi granted TELC's client, Gulf Restoration Network, summary judgment that Hancock County Development, LLC violated the Clean Water Act when constructing a residential and commercial development near Bay St. Louis. The company violated the Act by discharging storm water to area streams without a state discharge permit and by destroying wetlands without a permit from the U.S. Army Corps of Engineers. The Court also found that the Gulf Restoration Network has standing to prosecute the lawsuit. *Gulf Restoration Network v. Hancock County Development, LLC*, 08-cv-00186 (S.D. Miss. 2011) (772 F. Supp.2d 761) (157-019)

Company held liable for 1,600 Clean Water Act violations: On December 2, 2010, the U.S. District Court for the Eastern District of Louisiana held Sun Drilling Products Corporation liable for more than 1,600 violations of the Clean Water Act, including discharges of ethylbenzene, a "toxic pollutant," only a quarter mile above a source of Plaquemines Parish's drinking water. The Court also upheld the Louisiana Environmental Action Network's standing to sue about the violations. (2010 WL 5055900) The Court also denied the Defendant's Motion for Reconsider on January 6, 2011 (2011 WL 52529). Earlier, the Court had rejected the defendant's argument that a state administrative process barred LEAN's lawsuit, *Louisiana Environmental Action Network v. Sun Drilling Products Corp.*, 716 F. Supp. 2d 476 (E.D. La. 2010). (101-120)

Oil and gas exploration and production waste disposal well permit vacated: On September 9, 2010, a Louisiana district court vacated and remanded a Department of Natural Resources, Office of Conservation permit for a Class II (E&P Waste) injection disposal well in Gueydan, Louisiana because the agency failed to perform the constitutionally required environmental analysis, known as the "IT Questions." TELC filed the action on behalf of Jan Bernhardt, Charlene Jannise, and Wilma Subra. (168-001)

Honored with pro bono award: On July 23, 2010, the New Orleans Chapter of the Federal Bar Association honored TELC with its Camille F. Gravel, Jr. Pro Bono Award.

EPA objects to landfill air permit: On May 27, 2010, EPA granted in part a petition for an objection to an LDEQ Clean Air Act permit for the Woodside Landfill in Livingston Parish. EPA found that LDEQ failed to explain “its conclusions that the permit provides for monitoring sufficient to ensure compliance with all applicable requirements.” EPA ordered LDEQ to explain “why it is not necessary to continuously monitor the composition of the gas entering the flare” to ensure that the flare meets Clean Air Act standards. If current monitoring provisions are not enough to ensure compliance, LDEQ “must add monitoring requirements”. TELC filed the petition on behalf of the Louisiana Environmental Action Network, the Concerned Citizens of Livingston Parish and others. (101-093.3)

SLAPP suit dismissed: On May 20, 2010, a Louisiana district court dismissed a SLAPP suit (“Strategic Lawsuit Against Public Participation”) against a community group and its members who criticized Petroplex International’s plan to build a petroleum storage facility in St. James Parish. Petroplex voluntarily dismissed its suit after TELC’s clients moved to strike the action under Louisiana’s anti-SLAPP law, La. Code Civ. Proc. art. 971. (101-121.2)

Bill to cripple Louisiana clinics defeated: On May 19, 2010, the Louisiana Senate Commerce, Consumer Protection, and International Affairs Committee killed Senate Bill 549. Senator Robert Adley, R-Benton, introduced the bill at the Louisiana Chemical Association’s (LCA’s) behest to try to force Tulane University to shut down TELC in return for continued state funding. Tulane and Loyola Universities, students, clients, alumni, and clinical faculty from all the state’s law schools worked—with help from the Clinical Legal Education Association, the Society of American Law Teachers, the American Association of Law Schools, the Louisiana State Bar Association, the ABA, and many others—to publicize clinics’ roles in legal education and expanding access to the legal system. At the May 19 hearing, Tulane University President Scott Cowen testified that if Tulane were to shut down its clinics to preserve state funding under Bill 549, “we [would] throw under the bus every indigent person in this state ... and say we will not represent you because the money is more important. That does not happen in America.” On May 24, 2010, *New Orleans CityBusiness* editorialized: “By attempting to snuff [TELC’s] existence, Adley and the LCA were, in effect, thumbing their noses at the law, judicial process and regulation Lawmakers deserve commendation for helping the bill meet its demise.”

Outstanding natural resource waters protected: On May 5, 2010, on behalf of the Little Tchefuncte River Association, Gulf Restoration Network, and Matthew Allen, TELC obtained a court judgment that requires the Louisiana Department of Environmental Quality (LDEQ) to consider alternative discharge locations for a private wastewater treatment facility at Penn Mill Lakes Subdivision. Currently the facility discharges into Horse Branch Creek and the Tchefuncte River—streams designated as Outstanding Natural Resource Waters. (167-001.1)

Plans for new coal-burning power plant canceled: Louisiana Generating canceled plans to build a new 705-MW coal-burning unit at its Big Cajun II Power Plant facility near New Roads, Louisiana. On March 4, 2010, the company asked LDEQ to rescind its Clean Air Act permit for this new unit—and LDEQ officially cancelled the permit on April 28, 2010. Louisiana Generating dropped its plans to build the new coal-fired unit after TELC appealed the plant’s Clean Air Act permit on January 14, 2009, on behalf of Sierra Club, Louisiana Environmental Action Network, the Alliance for Affordable Energy, and Mr. O’Neil Couvillion. TELC also petitioned EPA to veto the permit on behalf of largely the same client group. (126-018.1, 126-018.3).

Orleans Parish wetlands preserved: On April 20, 2010, The City of New Orleans denied a proposed coastal use permit to fill in wetlands adjacent to Bayou Bienvenue and the Mississippi River Gulf Outlet to build an industrial park. TELC submitted comments and argued at the public hearing on behalf of Gulf Restoration Network, Louisiana Environmental Action Network, Sierra Club—Delta Chapter, Coalition to Restore Coastal Louisiana, Environmental Defense Fund, National Wildlife Federation and Mr. O’Neil Couvillion. The City of New Orleans explained that “[t]he decision reflects the national concern for both protection and utilization of important resources. Consideration was given to the potential economic benefits

however the potential social and environmental benefits of not authorizing the project outweigh the potential economic benefits.” (101-094.1)

New Orleans sewage treatment compliance schedule established: On March 23, 2010, Judge Mary Ann Vial Lemmon entered a modified consent decree setting new (post-Hurricane Katrina) schedules for repairing New Orleans’ sewerage pump stations and collection system. *U.S. v. Sewerage and Water Board of New Orleans*, No. 93-cv-3212 (E.D. La.). TELC represented intervenors League of Women Voters of New Orleans, Lake Pontchartrain Basin Foundation, Orleans Audubon Society, and Louisiana Environmental Action Network in the negotiations. (135-001).

Oil refinery liable for violating Clean Air Act: On February 3, 2010, the U.S. District Court for the Eastern District of Louisiana held a St. Bernard Parish oil refinery liable for violating the Clean Air Act. The Court ruled that Murphy Oil USA, Inc. “frequently violated its permits by exceeding emission limitations and continued to violate them after plaintiffs filed suit” and that “Murphy has not shown that it has changed the conditions that led to the violations” The court rejected the refinery’s argument that the plaintiff neighborhood group is “too disorganized and informal” to have legal standing to sue to protect member interests. The Court held that “[c]orporate formalities and formal membership structure are not constitutional requirements for associational standing.” *Concerned Citizens Around Murphy v. Murphy Oil USA, Inc.*, No. 08-4986 (E.D. La. Feb. 3, 2010) (686 F. Supp. 2d 663) (161-003)

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) (2009 WL 3841728) (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 in Montz, Louisiana, 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 (LPSC) had approved “a longer-term suspension” of the project for at least three years. LPSC originally approved the project after phase I of an administrative hearing on March 19, 2008. On behalf of its clients, TELC appealed that decision and also issued a notice of intent to sue Entergy on April 1, 2008, alleging that the project’s construction would violate the Clean Air Act because Entergy had not received government-approved limits for mercury and other hazardous air pollutants. Entergy announced on April 23, 2008, that it would delay construction until it received such limits. Entergy received the limits in a permit modification on February 26, 2009. Meanwhile, however, on February 18, 2009, an LPSC administrative law judge in phase II of the administrative proceedings heard oral argument from a TELC student attorney and others about whether Entergy must show that the project is economically viable. On March 13, 2008, LPSC ordered Entergy to suspend the project pending a review of economic viability. On April 1, 2009, Entergy submitted its review and asked LPSC for the longer-term delay that LPSC approved on May 22. 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)

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)

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 reconstructed 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)

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-Canochee 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)

Rollback of Clean Air Act protections defeated: On behalf of the Louisiana Environmental Action Network, TELC worked with a coalition of public-interest law groups and state governments to defeat a 2004 EPA attempt to roll back CAA protections for residents in areas where air quality violates health protection standards for ozone pollution, such as Louisiana’s five-parish Baton Rouge area. The court invoked the Act’s anti-backsliding provisions to overturn the rollback. *S. Coast Air Quality Mgmt. Dist. v. EPA*, 472 F.3d 882 (D.C. Cir. 2006), clarified on denial of reh’g, 489 F.3d 1245 (D.C. Cir. 2007), *cert. denied* 552 U.S. 1140 (Jan. 14, 2008). (101-078)

Hurricane-debris management improved: On August 9, 2006, TELC’s clients filed a challenge to LDEQ orders that—in response to large volumes of debris from Hurricanes Katrina and Rita—expanded the types of wastes disposed of in unlined construction and demolition debris landfills and waived Clean Water Act

requirements. Over the course of the litigation and negotiations, LDEQ took several positive steps, requiring owners and operators of the landfills to apply for Clean Water Act permits (on December 14, 2006), withdrawing authorization for these landfills to accept household hazardous waste (on January 19, 2007), and reducing the number of landfills to which the emergency orders applied (progressively after January 19, 2009). The court dismissed the case on jurisdictional grounds on September 5, 2007. (101-095)

Northshore wetlands preserved: On May 11 2007, St. Tammany Parish residents settled a National Environmental Policy Act lawsuit against the U.S. Army Corps of Engineers by entering into an agreement with the intervenor—Terra Bella Group, L.L.C., a real estate developer whose project was the subject of the Environmental Assessment at issue. The developer agreed to maintain a Conservation Servitude held by St. Tammany Parish on a portion of the project site to include 172.35 acres, of which approximately 108 acres consist of wetlands. The purpose of the servitude is to retain the land and water areas in their natural condition and to retain the area as suitable habitat for fish, plants or wildlife. *O'Reilly v. U.S. Army Corps of Engineers*, No. 06-10788 (E.D. La.), ECF No. 77 (110-005)

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)

Illegal State Implementation Plan Contingency Measure Vacated: On September 8, 2004, the U.S. Court of Appeals for the Fifth Circuit vacated EPA's approval of a Louisiana attempt to use emission reductions from outside the Baton Rouge non-attainment area as a contingency measure for failure to timely attain health protection standards of ozone air pollution. *Louisiana Env'tl. Action Network v. U.S. E.P.A.*, 382 F.3d 575 (5th Cir. 2004) (101-040)

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)

EPA ordered to determine Baton Rouge Clean Air Act attainment status: The federal district court for the Middle District of Louisiana ordered EPA to follow the Clean Air Act's mandate for a determination of whether Baton Rouge had achieved attainment of the ozone health protection standard by the Act's deadline. *Louisiana Env'tl. Action Civil Action Network v. Whitman*, No. CV 00-879-A, 2002 WL 35588654 (M.D. La. Feb. 27, 2002) (adopting as modified a Magistrate-Judge recommendation published at 2001 WL 37080645 (M.D. La. Aug. 29, 2001))

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)

Kisatchie Forest wild horses saved: 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 (EA) under the National Environmental Policy Act. After preparing an EA, the Army decided on June 9, 2010, to attempt sterilization of the horses over a "longer period of time," to return them to Army land, and to allow them "to roam free" rather than to remove them. (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)

Underground injection permit vacated: On August 24, 2000, the 19th Judicial District Court vacated a Department of Natural Resources underground injection well permit issued for oilfield waste treatment, storage, and disposal near Gibson, Louisiana. TELC represented Terrebonne Parish Consolidated Waterworks Number 1 and others in the action. (102-001)

Recipient of ABA award: On July 10, 2000, the American Bar Association honored TELC with its "Award for Distinguished Achievement in Environmental Law and Policy."

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)

Lawyer of the year runner-up: In 1998, the National Law Journal named TELC a runner-up for its "Lawyer of the Year" award.

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)