

Annual Report

Fall 2001-Spring 2002

Tulane Environmental Law Clinic



A Program of the Tulane Law School

Tulane Environmental Law Clinic

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2001-2002**

Political Controversy and A Busy Year at the Tulane Environmental Law Clinic



Elizabeth Teel, Deputy Director; Albertha Hasten, LEAN President; & Punam Parikh, student attorney at a press conference October 2001

This is the Tulane Environmental Law Clinic's first annual report, which cover the Clinic's activities during the fall 2001 and spring 2002 semesters.

INTRODUCTION

Last December saw the premiere of Lifetime Television's "Taking Back Our Town" - a movie about St. James Citizens for Jobs and the Environment's successful challenge to the Louisiana Department of Environmental Quality's decision to allow Shintech, Inc. to build a huge new polyvinyl chloride plant in an already overburdened community. From 1996-1998, student attorneys from the Tulane Environmental Law Clinic represented the St. James Citizens in that battle and the Clinic is prominently featured in the movie.

After the St. James Citizens' success in the Shintech case, the Louisiana Supreme Court revised Rule XX, which allows the Clinic's student attorneys to appear in court before completing law school or passing the bar exam. Contrary to the fears of many, however, the practical effect of the revisions was not to deny legal representation to the Clinic's clients or to diminish the role of the Clinic's student attorneys. Instead, as explained in an article posted on the Clinic's web page (<http://www.tulane.edu/~telc>), the Clinic remains a vital part of the Louisiana legal community and a place where Tulane law students represent real clients on the cutting-edge of environmental law.

Perhaps inevitably, given the state of environmental regulation in Louisiana, the Clinic's docket focused largely on the related issues of (1) consistent and effective application of the rule of law and (2) environmental protection and justice.

For years, many of the Clinic's clients have maintained that the Louisiana Department of Environmental Quality ("LDEQ") - despite the best efforts of some individual LDEQ staff members - has failed to competently or evenhandedly administer the anti-pollution programs that the Louisiana legislature and the U.S. Environmental Protection Agency ("EPA") have entrusted to it. Many of these concerns were confirmed and amplified in March 2002, when the Louisiana Legislative Auditor issued an independent report concluding that "LDEQ enforcement" and "LDEQ's permitting activities . . . may not ensure that the state's health and environmental resources are protected." (The report is available at <http://www.lla.state.la.us/perform.htm>.)

Various citizen groups, represented by the Clinic, are attempting to fill the enforcement gap at LDEQ by filing citizen enforcement suits. For example, the Concerned Citizens of New Sarpy launched a major Clean Air Act enforcement action against Orion Refining Corp., which is located in St. Charles Parish. On behalf of the organization, student attorneys Christopher Ott and Robert Sidman based significant allegations on Orion's admissions found in LDEQ's files, but upon which LDEQ had failed to act. Similarly, in another case where LDEQ failed to enforce the law, the Oakville Community Action Group, represented by student attorney Zahirah Washington, brought a citizen enforcement case in April 2002 against Industrial Pipe, Inc. after LDEQ and EPA ignored the group's formal notices of illegal operations at a solid waste landfill.

On another front, many groups are demanding that LDEQ reform by pressing EPA to closely monitor the agency and by asking the courts to review LDEQ actions because it continuously fails to do its job in protecting health and the environment of Louisiana. As part of that effort, the Louisiana Environmental Action Network ("LEAN") and other citizen groups are pushing EPA to withdraw its authorization for Louisiana to administer the federal clean air and water programs, based on specific illegalities that the Clinic's student attorneys cited in a petition for withdrawal of the water program and in administrative comments about deficiencies in Louisiana's air quality program.

Also on behalf of LEAN and others, the Clinic's student attorneys have petitioned EPA to overturn five specific LDEQ-issued permits and have challenged several other permits in state court because of the agency's deficient permitting process. For example, in April, on behalf of a local musician, student attorney James Johnston obtained a state court order vacating LDEQ's issuance of a water quality certification that would have allowed dredging and disposal of mercury contaminated sediments in and around Little Lake, at the mouth of the East Pearl River in St. Tammany Parish.

These and other cases on Clinic's docket are summarized on page 11 of this report and at <http://www.tulane.edu/~telc/docket.html>.

DESCRIPTION

“Before the Clinic [Tulane Environmental Law Clinic] and SCLDF [Sierra Club Legal Defense Fund, now Earthjustice] were established, there was almost no place to turn for citizen groups who could not afford to pay for legal assistance. Now they have some of the best in the world.”¹



Tulane Environmental Law Clinic
Class of 2002

The Tulane Environmental Law Clinic, a program of Tulane Law School, is part of Tulane University, which is a non-profit, 501(c)(3) organization. The Clinic began in 1989 to address the inability of the public, in particular grassroots organizations and low-income persons, to effectively participate in the environmental decision-making process in Louisiana. Since its inception, the Clinic has provided free legal representation and community outreach to over 180 community organizations, low-income individuals, and local governments throughout Louisiana who could not otherwise afford competent legal representation. Additionally, the Clinic has helped more than 350 law students use their legal training to become zealous advocates for the environment and the public by representing actual clients.

MISSION

The Tulane Environmental Law Clinic's mission is to train effective and ethical lawyers by guiding law students through actual representation of clients. The Clinic represents individuals and community organizations that could not otherwise afford competent legal help. The Clinic also represents local governments, such as parish water providers. By giving a voice to clients who would otherwise not be heard, the Clinic broadens public participation in environmental decisions - before both courts and administrative agencies. By representing clients who have historically been left out of governmental processes, the Clinic has become a powerful force for reform of Louisiana environmental law.

The Clinic's Community Outreach Program strives to enhance the power and effectiveness of grassroots organizations, municipal governments, and individual citizens. The Program works to integrate the Clinic's legal activities into long-term community strategies, helping communities to create a context within which they can realize the full benefit of legal victories and effectively respond to legal setbacks.

¹ Roberts, J.T. and Toffolon-Weiss, M. M. *Chronicles from the Environmental Justice Frontline*. Cambridge University Press (2001).

**STAFF
2001-2002**



L to R: Adam Babich, Sallie Davis, Rebecca Dayries, Elizabeth Teel, Karla Raettig

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. He has taught as an adjunct professor at Georgetown University Law Center, American University, and the University of Denver.

Elizabeth Teel, Deputy Director

Elizabeth Teel has been at the Clinic since 1997, primarily handling cases involving hazardous and solid waste, water pollution, and environmental justice. Prior to joining the Clinic faculty, she was a well-known trial lawyer, serving for four and a half years as a felony prosecutor in Orleans Parish. Ms. Teel, who has her Masters degree in Environmental Law, has received awards for Outstanding Prosecutor and Outstanding Commitment to Environmental Enforcement. She teaches trial advocacy as an adjunct professor at Tulane Law School. Ms. Teel left the Clinic in June 2002 to pursue a career in plaintiff's toxic tort litigation. John Suttles has replaced Ms. Teel as Deputy Director.

Sallie Davis, Staff Attorney

Sallie Davis joined the Clinic after spending the previous 12 years in Portland, Maine. A New Orleans native, 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 has found her legal niche in the area of energy law from a consumer advocate and environmental perspective.

Karla A. Raettig, Staff Attorney

Karla A. Raettig moved to New Orleans from Seattle, where she litigated for Earthjustice Legal Defense Fund. Before that she clerked for U.S. Magistrate Judge Janice M. Stewart. In 1997, Ms. Raettig graduated *magna cum laude* from Lewis & Clark Law School. 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.

Rebecca Dayries, Community Outreach Coordinator

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 and a Master of Science in Public Health, with a concentration in Environmental Policy, from Tulane University. She has worked extensively 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.

STUDENT PRACTICE



Swearing In Ceremony, Sept. 7, 2002 Brennan Curry, Punam Parikh, and Zahirah Washington are sworn in as student attorneys.

Each school year, approximately 26 third-year law students join the Tulane Environmental Law Clinic to hone their professionalism, strategic thinking, and litigation skills. For two full semesters, clinic participants engage in a focused and intensive refinement of their research, writing, counseling, negotiating, and oral argument abilities. Serving as "student attorneys," they take responsibility for representing actual clients before courts or administrative agencies. In the fall, Clinic students participate in an Environmental Advocacy seminar, taught by Adam Babich, to gain an academic perspective on their practical work on behalf of clients.

The Louisiana Supreme Court and the federal district courts for the Eastern, Western, and Middle Districts of Louisiana have adopted "student practice" rules that, subject to some restrictions, authorize Clinic students to prepare and file pleadings and represent clients in real cases before the courts. This authorization is a privilege, carrying with it the responsibility to provide zealous, diligent representation that meets the highest standards of professional behavior. The opportunities and responsibilities afforded by these court rules greatly enhance the Clinic's ability to provide students with real-world litigation experience.

Louisiana Supreme Court Rule XX authorizes Clinic students to appear in Louisiana state courts and before state administrative tribunals. Under Rule XX, "student attorneys" must have completed four full-time semesters of law school studies, including instruction in legal ethics. Further, each student attorney must be "of good moral character and competent legal ability, and . . . adequately trained to perform as a legal intern." Student attorneys may appear by court appointment on behalf of indigent clients and also on behalf of clients whose income does not exceed 200% of the U.S. Department of Health and Human Services poverty guidelines.

Pursuant to Rule XX, Tulane Environmental Law Clinic student attorneys appear on behalf of individuals or governmental agencies. Tulane Environmental Law Clinic students may also assist licensed Clinic attorneys in the representation of community organizations. Because of practical difficulties in applying Rule XX's income limitations to organizations, however, student attorneys do not appear before Louisiana state courts or administrative tribunals on behalf of those organizations. Student attorneys may and do, however, represent various members of community organizations as individuals.

CLINIC STRUCTURE & IN-TAKE POLICY

The Tulane Environmental Law Clinic is comprised of a six-person staff (including the director, deputy director, two staff attorneys, a legal secretary, and a community outreach coordinator), twenty-six third-year law students, and undergraduate interns.

The Clinic represents clients on cases of legal merit and educational value when:

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



Zahira Washington, student attorney
& Jill Mastrototaro, Lake
Pontchartrain Basin Foundation

The Clinic will not take a case unless the case has evidentiary support or is likely to have evidentiary support after investigation. The case must also be warranted by existing law or by a nonfrivolous argument for a change to or extension of existing law. The Clinic's clients determine each lawsuit's goals (providing, of course, that those goals are lawful). Then, in consultation with the clients, Clinic students and staff attorneys select the legal tactics that best advance their clients' goals.

Citizens usually request the assistance of the Tulane Environmental Law Clinic upon (1) discovering that a polluting facility is proposing to either locate or expand in their community, (2) suspecting that a company is operating in violation of an environmental law, (3) learning that a company is applying for a permit that will negatively impact a wetland area, (4) being denied access to public records or otherwise denied involvement in the environmental decision-making process, or (5) becoming concerned that governing agencies responsible for environmental protection are not adequately doing their job.

PROJECTS 2001-2001

In response to our clients' requests, the Clinic has focused particular attention to air quality, water quality, and wetland issues. The Clinic, in collaboration with our clients, has created the following initiatives to assist our clients in achieving their long-term goals of environmental protection: the Clean Air Initiative, the Water Quality Protection Initiative, the Endangered Wetlands Initiative, and the Community Outreach Program.

CLEAN AIR INITIATIVE

The Clean Air Initiative targets toxic air pollution in Louisiana from industrial facilities, including oil refineries, a paper mill, and plastics manufacturing facilities. Those facilities are overwhelmingly concentrated in low-income, minority communities. For example, the Tulane Environmental Law Clinic is prosecuting a citizen enforcement action on behalf of the Concerned Citizens of New Sarpy to reduce air pollution from Orion Refinery in St. Charles Parish. Data from the U.S. Environmental Protection Agency shows that this parish is ranked among the dirtiest 20% of all counties in the U.S. in terms of noncancer hazards from air pollutants. Orion spews out over 143,000 pounds of hazardous air pollutants a year, 133,000 of which are released during "accidents" as a result of faulty maintenance operations and sloppy operating practices. New Sarpy residents live and breathe within feet of the refinery and "the community suffers from poor health and the constant fires, explosions and chemical accidents that are a regular occurrence at Orion," according to a Louisiana Bucket Brigade report.

Unfortunately, the citizens of Louisiana cannot rely upon the state environmental protection agency—the Louisiana Department of Environmental Quality ("LDEQ")—to protect them from air pollution. A March 2002 report by the Louisiana Legislative Auditor confirmed the problems Louisiana residents have with LDEQ— that LDEQ's permitting activities, regulation of self-monitoring, and enforcement "may not ensure" that the state's environmental resources are protected. The Auditor's report identified the following problems with the state's **air** program: "LDEQ does not routinely compare annual emissions inventory statements with permitted limits in order to determine if facilities have excess air emissions; LDEQ did not issue enforcement actions for 25% of air monitoring violations; LDEQ did not escalate 76% of enforcement actions where repeat violations occurred; and 22% of self-monitoring reports for air were either never submitted to LDEQ or could not be located by LDEQ."

This report underscores the need for public participation and citizen enforcement of environmental laws to protect public health and the environment, as the agency charged with doing so is either incompetent or unwilling. In response to these health and environmental justice concerns, the Clinic has focused on applying technical, legal, and outreach expertise to inform and assist affected communities. The Clean Air 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 air permitting and enforcement process.

The Clean Air Initiative's focus is on: **(1)** implementing a citizen enforcement initiative against companies that significantly violate their air permits; **(2)** ensuring that the next "state implementation plan" that EPA approves for Louisiana's "Baton Rouge ozone nonattainment area" requires real emission reductions; **(3)** prosecuting credible permit-by-permit challenges to minimize the constant emission increases approved by the Louisiana Department of Environmental Quality; and **(4)** improving efforts to educate and empower local activists,

including production, revision, and distribution of up-to-date resources and considerable outreach efforts.

WATER QUALITY PROTECTION INITIATIVE

The Water Quality Protection Initiative addresses the significant water pollution problems in Louisiana. Louisiana has an abundance of water resources on which its citizens rely not only for livelihoods and recreation, but also for drinking water. However, it has become increasingly apparent that the state of Louisiana is not effectively protecting public health and the environment from water pollution. According to data from the EPA, almost 80% of water bodies in the state are impaired.

This initiative targets the statewide problems of poor water quality caused by excessively high releases of toxic and conventional pollutants. The Clinic is utilizing its legal and strategizing expertise, and supporting technical resources to persuade, and, if necessary, to legally compel industries and regulatory agencies to reduce discharges into Louisiana's water bodies. The Clinic has also initiated citizen enforcement of existing laws to protect the water that Louisianians depend on for drinking, recreational use, and as a significant source of seafood.

The Water Quality Protection Initiative was developed 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. To achieve these goals, the Water Quality Protection Initiative presses the government agencies responsible for water quality protection to uphold their duty to protect public health and the environment, deters industry violations of the Clean Water Act, and provides resources to the clients that facilitate their involvement in environmental decision-making.

The Tulane Environmental Law Clinic launched a long-term initiative to turn the tide on water quality protection in Louisiana in the fall of 2001. This initiative includes: **(1)** petitioning the United States Environmental Protection Agency to withdraw its approval of the Louisiana Department of Environmental Quality's administration of the water pollution program and resume control over the program based upon LDEQ's inability to effectively control companies and municipalities that release pollutants into Louisiana's waters and **(2)** investigating, preparing, and prosecuting Clean Water Act citizen enforcement actions against companies that have significant water pollution violations.

ENDANGERED WETLANDS INITIATIVE

The Endangered Wetlands Initiative strives to protect Louisiana's abundant, unique, and vital coastal wetlands resources. Louisiana is home to more than three million acres of coastal wetlands, which account for approximately 40% of the wetlands in the continental United States. Louisiana's shrimp and oyster harvest supplies 35 to 45% of the nation's needs annually, and Louisiana contributes nearly 30% of the total volume of the U.S. fisheries, with an annual value of about \$1 billion. These valuable wetlands provide wintering habitat for 70% of the waterfowl that use the Central and Mississippi flyways. They are also home to many endangered species such as the manatee and Gulf Sturgeon and provide more fishery landings than any other state in the lower 48 states. In addition to the fish and wildlife value, the wetlands reduce storm and erosion damage, detain floodwaters, recharge groundwater aquifers, and maintain water quality.

Unfortunately, Louisiana's wetlands are vanishing at a rate of 25 to 35 square miles each year—the equivalent of losing one acre of land every 24 minutes or an entire football field every half-hour. Since the 1930's, Louisiana has lost one million acres of wetlands, which have been converted to open water. Louisiana's wetland loss is a local, state, and national crisis because of the economic and ecological value they provide. At the current rate, Louisiana will lose another one million acres in the next 40 years, bringing the Louisiana shoreline inland as much as 33 miles in some areas. This situation demands urgent action to protect these endangered wetlands.

Citizen involvement is imperative to complement and accelerate the government's commitment to the protection and restoration of these nationally vital wetlands. The Endangered Wetlands Initiative uses permitting, selective litigation, and outreach to enhance citizen efforts to protect and restore wetlands from particularly harmful projects and to empower organizations to effectively participate in wetlands permitting, regulation, and policy formation.

To achieve these goals, the Tulane Environmental Law Clinic utilizes its legal expertise and outreach ability to compel industries and regulatory agencies to preserve Louisiana's coastal wetlands. This work involves: **(1)** prosecuting Clean Water Act 404 permit and state water quality certification challenges to minimize the threat of development on coastal wetlands, **(2)** pursuing targeted litigation against permitting authorities that improperly grant permits that negatively impact wetlands in violation of the law, and **(3)** providing clients with up-to-date educational resources and strategy advice to combat coastal wetlands loss.

COMMUNITY OUTREACH PROGRAM

The Community Outreach Program strives to ensure that the clients develop and maintain an overall strategy to achieve their goals and that they are actively participating in their cases. This work involves helping the organization and individual clients understand the scope of the environmental quality and enforcement problems in the state and what actions they can take to affect change in these areas. The Community Outreach Program assists these organizations in working with the staff attorneys and technical experts to identify the best remedies for these problems and to get involved in the environmental decision-making process.

The Outreach Program's basic strategy is to: **(1)** empower clients—local citizens, grassroots organizations, and municipalities—to help them participate effectively in government decisions concerning their neighborhoods and environment, **(2)** promote dialogue between community groups, the Clinic, the funding community, elected officials, representatives of polluting industries, and the media, and **(3)** pass along techniques and knowledge to emerging environmental leaders through the training of undergraduate interns and citizens.

Under the direction of the Community Outreach Coordinator, with the assistance of dedicated interns, the Outreach Program:

- Facilitates community meetings, conference calls, workshops, and training sessions to empower clients.
- Issues timely and accurate information on environmental issues and recent developments to Clinic staff and clients.

- Assists clients with networking, mailings, speaking, training, and strategy.
- Serves as the primary liaison between the Clinic and its clients, working with Clinic staff and student attorneys to develop strategies for advancing client goals.
- Directs the Clinic's media strategy, maintaining a working relationship with members of the press, preparing press materials, and coordinating with clients regarding requests for press events.
- Maintains and updates the Clinic's web page, www.tulane.edu/~telc.

DOCKET 2001-2002

Tulane Environmental Law Clinic student attorneys researched, prepared, and filed legal briefs, administrative comments, petitions, notices, and settlement proposals on behalf of individuals, government agencies, and non-profit environmental and community groups throughout the year. When possible, the student attorneys participated in settlement negotiations and client meetings, presented comments before state agencies, and argued cases before state and federal courts.

LAWSUITS

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.)

Louisiana Environmental Action Network v. Whitman, No. 02CV226-B-2 (M.D. La. Mar. 1, 2002) (Seeking a court order that EPA must respond to two petitions under Clean Air Act § 505: (1) for an EPA veto of a modified Title V permit that LDEQ issued to Dow Chemicals, Inc. for a High Density Polyethylene facility in Plaquemine, Iberville Parish, Louisiana, and (2) for an EPA veto of a Title V permit that LDEQ issued to Borden Chemicals, Inc. for a formaldehyde facility in Geismar, Ascension Parish, Louisiana. Both petitions challenge the validity of emission offsets that LDEQ used to justify increased air emissions of volatile organic compounds in an area that violates federal health-protection standards for ozone pollution.)



Concerned Citizens of New Sarpy, Pres. Dorothy Jenkins

Concerned Citizens of New Sarpy v. Louisiana Department of Environmental Quality No. 492276 (19th Jud. Dist. Feb. 8, 2002) (Challenging LDEQ's issuance of an air emissions permit to a refinery on the grounds that the refinery's neighbors were entitled to comment on changed circumstances and events that occurred during the more than 450 days between the close of public comment period and issuance of the permit.)

Louisiana Environmental Action Network, et al. v. Louisiana Department of Environmental Quality No. 492- 277 (19th Jud. Dist. Feb. 8, 2002) (Challenging LDEQ's issuance of a solid waste permit to a Waste Management landfill on the grounds that the mandatory waste capacity determination and emergency response requirements had not been met, and that the LDEQ's determination that there was no threat to groundwater was arbitrary and capricious and not

supported by a preponderance of the evidence.)

North Baton Rouge Environmental Association v. Exxon, No. 00/CA/1878 (La. Sup. Ct. Feb. 7, 2002) (Seeking remand of LDEQ's approval of increased air emissions of volatile organic compounds in an area that already violates federal health-protection standards for ozone pollution.)

Concerned Citizens of New Sarpy v. Orion Refining Corp., No. 01-3704, Sect. F, Mag. 5 (E.D. La., Dec. 11, 2001) (Clean Air Act citizen enforcement suit seeking compliance with emission limits and an award of civil penalties, payable to the U.S. Treasury.)

Coalition for Louisiana Animal Advocates v. U.S. Department of Agriculture, U.S. Forest Service, & U.S. Army No. 01-3161 (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 regarding the agencies' efforts to eradicate wild horses in the Kisatchie National Forest.)

Louisiana Environmental Action Network v. Louisiana Department of Environmental Quality, No. 488025 (19th Jud. Dist. Sep. 21, 2001) (Seeking remand of an air emission permit for a paper mill in Zachary, La. because of LDEQ's failure to conduct an environmental assessment before authorizing increased air emissions of volatile organic compounds in an area that already violates federal health-protection standards for ozone pollution.)

Bartholomew Woods Community Association et al. v. Louisiana Department of Environmental Quality, No. 486568 (19th Jud. Dist. Aug. 10, 2001) (Challenging issuance of Louisiana Pollutant Discharge Elimination System Permit by LDEQ to Cleco Midstream Resources, L.L.C./Perryville Power Station to construct and operate a natural gas power plant in Ouachita Parish.)

Rudy Mills, Louisiana Audubon Council, and Sierra Club v. Louisiana Department of Environmental Quality, No. 486412 (19th Jud. Dist. Aug. 1, 2001) (Challenging LDEQ's issuance of a water quality certification to Hancock County Port and Harbor Commission to dredge mercury contaminated sediments in Little Lake.)

Sierra Club, Clean Air and Water, and Community In-Powerment Development Association v. U.S. EPA, No. 01-60537 (5th Cir. July 13, 2001) (Local counsel on challenge to extension of deadline for attaining the health protection standard for ozone pollution in the area of Beaumont and Port Arthur, Texas.)

Louisiana Environmental Action Network v. Louisiana Department of Environmental Quality, No. 475,287 (19th Jud. Dist. Jan. 3, 2001) (Seeking remand of an air emission permit for a merchant power plant in Eunice, La.)

Louisiana Environmental Action Network v. Whitman, No. 00CV879-A-M3 (M.D. La. Nov. 17, 2000) (Seeking an injunction to compel EPA to issue a determination that the Baton Rouge area has failed to meet federal health protection standards for ozone. Under the Clean Air Act, such a determination triggers automatic safeguards to protect the public from excessive air pollution.)

Bogue Lusa Waterworks, et al. v. Louisiana Department of Environmental Quality, No. 474,677 (19th Jud. Dist. Oct. 30, 2000) (Seeking remand of LDEQ's approval of an air emission permit

for a merchant power in Bogalusa (Washington Parish), La., because of LDEQ's failure to consider impacts of the permittee's plans to use groundwater for cooling on a public water supply.)

PUBLIC COMMENTS, NOTICES, AND PETITIONS

Comments on behalf of Assumption Parish People's Environmental Action League, Louisiana Environmental Action Network, Ms. Albertha Hasten and Mr. Justin Lugenbhul re: Belle Co. Landfill (Requesting that LDEQ deny Belle Company's request for a permit to construct a 340-acre residential and industrial landfill because of numerous statute violations and because pro-landfill statements by LDEQ officials tainted the permitting process.) (May 10, 2002)

Notice of Lake Pontchartrain Basin Foundation and the Holy Cross Neighborhood Association re: U.S. Army Corps of Engineers' Inner Harbor Navigational Canal Project (Notice of intent to file a citizen suit under the Resource Conservation and Recovery Act for 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.) (April 17, 2002)

Request for Supplemental Environmental Impact Statement (EIS) on behalf of Holy Cross Neighborhood Association re: U.S. Army Corps of Engineers' Inner Harbor Navigational Canal Project (Requesting a Supplemental EIS to address (1) the impact of the project on marine and vehicular traffic during disasters requiring evacuation; (2) the impact on vehicular traffic in general given the lack of a new Florida Avenue Bridge; (3) corrected estimates of costs and benefits; and (4) environmental impacts and costs related to the stirring up and release of hazardous and solid wastes during dredging.) (April 17, 2002)



Louisiana Environmental Action Network
Director, Marlyee Orr & student attorney,
Samantha Klein; 4/10/02 Press Conference

Petition on behalf of Louisiana Environmental Action Network and 11 other organizations re: Emission Reduction Bank audit (Requesting that the EPA audit LDEQ's Emission Reduction Bank based on serious flaws with the system, which both EPA and LDEQ have acknowledged. The petition also requests that EPA ensure that permits relying on credits from the bank are valid under the Clean Air Act.) (April 10, 2002)

Comments on behalf of North Baton Rouge Environmental Association, Louisiana Environmental Action Network, and Ms. Juanita Stewart re: ExxonMobil Emission Reduction Credits (Objecting to LDEQ's proposed approval of ExxonMobil's application to have over 150 tons of VOC reductions credited in the Emission Reduction Bank, primarily because those reductions are not surplus as required by state law and the Clean Air Act. ExxonMobil used those same reductions previously in its permit application to offset increases from the Low Sulfur Gas Project and thereby avoided installing state-of-the-art emission controls.) (March 26, 2002)

Comments on behalf of St. James Citizens for Jobs and the Environment and the Louisiana Environmental Action Network re: Motiva Enterprises Convent Refinery, St. James Parish, Louisiana R-29975, R-30319 (Opposing a Low Sulfur Gas Project permit for failure to satisfy public participation requirements of the Clean Air Act.) (March 5, 2002)

Notice of Louisiana Environmental Action Network re: Artesian Utility Company, Inc. (Notice of intent to file a citizen suit under the Clean Water Act for violations of the Act's requirements to maintain effluent limitations.) (March 4, 2002)

Notice of Louisiana Environmental Action Network re: Covington Pontiac, Buick, GMC Trucks, Inc. (Notice of intent to file a citizen suit under the Clean Water Act for violations of the Act's requirements to file discharge monitoring reports to ensure compliance and to maintain effluent limitations.) (March 4, 2002)

Notice of Louisiana Environmental Action Network re: Mullhill, L.L.C. (Notice of intent to file a citizen suit under the Clean Water Act for violations of the Act's requirements to report flows and effluent samples in the discharge monitoring reports to ensure compliance.) (March 4, 2002)

Notice of Louisiana Environmental Action Network re: Select Medical Staffing, Inc. (Notice of intent to file a citizen suit under the Clean Water Act for violations of the Act's requirements to perform sample analysis, file discharge monitoring reports, and to properly operate and maintain the facility.) (March 4, 2002)

Notice of Louisiana Environmental Action Network re: South China Restaurant (Notice of intent to file a citizen suit under the Clean Water Act for violations of the Act's requirements to file Discharge monitoring reports, to comply with effluent standards, and to properly operate and maintain the facility.) (March 4, 2002)

Comments on behalf of Save Our Wetlands, Gulf Restoration Network, Louisiana Audubon Council, and Sierra Club-New Orleans Group re: St. Charles International Airport (Opposing the issuance of a Corps 404 permit to destroy 9,000 acres wetlands, some of which are part of the LaBranche wetlands, considered the most productive wetlands in the Lake Pontchartrain Basin.) (February 28, 2002)

Petition on behalf of the Louisiana Environmental Action Network and Ms. Juanita Stewart re: Port Hudson Operations Georgia-Pacific Corporation (Petition to EPA to veto an air permit for a pulp mill in Zachary, Louisiana. The permit 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.) (February 22, 2002)

Comments on behalf of Louisiana Audubon Council re: Morganza Levee Project (Opposing the issuance of a Corps 404 permit to destroy 4,000 acres of wetlands for a levee project.) (February 21, 2002)

Comments and testimony before the Louisiana Joint Subcommittee on Environment on behalf of Ms. Albertha Hasten and Louisiana Environmental Action Network re: Nitrous Oxide Emergency Rulemaking (Challenging two proposed rulemakings that would finalize the Louisiana Department of Environmental Quality's switch from a volatile organic compound pollution control strategy to a nitrous oxide strategy, and make substantive changes to the Emission Reductions Bank, on grounds that the changes will lead to an increase of ozone pollution in the Baton Rouge area, where air quality continually fails to meet national health standards.) (February 8, 2002)

Notice of Louisiana Environmental Action Network re: General Animal Hospital, Inc. (Notice of intent to file a citizen suit under the Clean Water Act for violations of the Act's requirements to file discharge monitoring reports to ensure compliance, to operate and maintain pollution control equipment, and to maintain effluent limitations.) (January 29, 2002)

Notice of Louisiana Environmental Action Network re: Bank One—Covington Banking Center (Notice of intent to file a citizen suit under the Clean Water Act for violations of the Act's requirements to file discharge monitoring reports to ensure compliance, to operate and maintain pollution control equipment, and to maintain effluent limitations.) (January 29, 2002)

Notice of Louisiana Environmental Action Network re: Beau Amis Lounge, Inc. (Notice of intent to file a citizen suit under the Clean Water Act for violations of the Act's requirements to file discharge monitoring reports to ensure compliance, to operate and maintain pollution control equipment, and to maintain effluent limitations.) (January 29, 2002)

Notice of Louisiana Environmental Action Network re: Zelden Physical Therapy (Notice of intent to file a citizen suit under the Clean Water Act for violations of the Act's requirement to file discharge monitoring reports to ensure compliance.) (January 25, 2002)

Notice of Louisiana Environmental Action Network re: Trinity Baptist Church (Notice of intent to file a citizen suit under the Clean Water Act for violations of the Act's requirement to file discharge monitoring reports to ensure compliance.) (January 25, 2002)

Comments on behalf of Louisiana Environmental Action Network and Ms. Albertha Hasten re: Rulemaking for Emission Reduction Credits for Nitrous Oxides (Requesting that the Department of Environmental Quality reject the proposed rules because they would violate Louisiana's Administrative Procedure Act and because they contain illegal provisions that will further delay Louisiana's compliance with Clean Air Act ozone standards.) (January 24, 2002)

Notice of Louisiana Environmental Action Network re: Gloria Coker, M.S. (Notice of intent to file a citizen suit under the Clean Water Act for violations of the Act's requirements to operate and maintain pollution control equipment and to file discharge monitoring reports to ensure compliance.) (January 23, 2002)

Notice of Louisiana Environmental Action Network re: Garrity, Sanders, Reed & Caire (Notice of intent to file a citizen suit under the Clean Water Act for violations of the Act's requirements to operate and maintain pollution control equipment and to file discharge monitoring reports to

ensure compliance.) (January 23, 2002)

Comments on behalf of the Louisiana Environmental Action Network and Ms. Juanita Stewart re: Port Hudson Operations Georgia-Pacific Corporation (Opposing an air permit for a pulp mill in Zachary, Louisiana. The permit 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.) (December 17, 2001)

Notice of Louisiana Environmental Action Network re: Holton Enterprises of Covington, Inc. (Notice of intent to file a citizen suit under the Clean Water Act for violations of the Act's requirements to operate and maintain pollution control equipment and to file discharge monitoring reports to ensure compliance.) (December 6, 2001)

Notice of Louisiana Environmental Action Network re: Northlake Moving and Storage, Inc. (Notice of intent to file a citizen suit under the Clean Water Act for violations of the Act's requirements to operate and maintain pollution control equipment and to file discharge monitoring reports to ensure compliance.) (December 6, 2001)

Notice of Louisiana Environmental Action Network re: Plaza Professional Center, Inc. (Notice of intent to file a citizen suit under the Clean Water Act for violations of the Act's requirements to operate and maintain pollution control equipment and to file discharge monitoring reports to ensure compliance.) (December 6, 2001)

Comments on behalf of Louisiana Environmental Action Network and Ms. Albertha Hasten re: the Proposed State Implementation Plan Revision for the Baton Rouge Ozone Nonattainment Area (Requesting that LDEQ reject the plan as inadequate, flawed, and responsive to an unauthorized EPA policy that would allow Louisiana an extension for their deadline for controlling ozone pollution.) (December 3, 2001)

Comments on behalf of the Concerned Citizens of Agriculture Street re: U.S. EPA Proposal to Take No Further Cleanup Action (Objecting to EPA's proposal to take no further action to clean up residential areas of the Agriculture Street landfill, a Superfund Site where a low-income, minority community is located.) (November 13, 2001)

Petition of Louisiana Environmental Action Network re: Dupont Dow Elastomers Chloroprene Unit, La Place, Louisiana AI No. 38806 (Petition to U.S. EPA under Clean Air Act § 505(b)(2) for a veto of a proposed permit to allow Dupont to vent approximately 18.1 tons of untreated chloroprene annually from a new reactor.) (November 13, 2001)

Comments on behalf of the Louisiana Environmental Action Network re: Dupont Dow Elastomers Chloroprene Unit, La Place, Louisiana AI No. 38806 (Opposing Dupont proposal to vent approximately 18.1 tons of untreated chloroprene annually from a new reactor.) (November 13, 2001)

Position Paper on behalf of Louisiana Environmental Action Network, Alliance for Affordable Energy and Mr. Mike Thibodeaux re: Regional Transmission Organization (Seeking adoption by the Louisiana Public Service Commission of a "Public Interest Policy" to protect ratepayers and the environment during planning and construction of a regional network for transmission of electrical power.) (November 9, 2001)

Comments on behalf of Bogue Lusa Waterworks re: Cogentrix Power Plant (Challenging the revised analysis provided by Cogentrix after the 19th Judicial District Court ordered remand of the permits for lack of proper environmental assessment by Louisiana Department of Environmental Quality. The comments focused on the failure to include impact on groundwater supply in the assessment, deficiencies in the cost-benefit analysis, and incomplete assessment of alternatives.) (October 31, 2001)

Comments on behalf of Kenner resident and Association of Community Organizations for Reform Now re: Angelo lafrate Asphalt Plant (Opposing to a request for permit modification by the asphalt plant, citing the Agency's failure to properly assess environmental impacts associated with a proposed change in fuel source from natural gas to oil.) (October 17, 2001)

Comments on behalf of the Sierra Club re: Queen Bess (Challenging the issuance of a Coastal Use Permit to destroy 13 acres of marshland to cut channels for boat slips in Grand Isle, the only inhabited barrier island of Louisiana, already in danger of vanishing due to coastal erosion.) (October 11, 2001)



Student attorney, Punam Parikh, & LEAN director Marylee Orr at a Press Conference 10/9/01 asking EPA to take away the water program from LDEQ

Petition on behalf of Louisiana Environmental Action Network and ten other organizations re: Louisiana's Water Program (Petition to U.S. EPA to rescind its delegation of the Clean Water Act's permitting program to the Louisiana Department of Environmental Quality because of the Agency's violations of the Clean Water Act and its failure to administer the program properly.) (October 9, 2001)

Comments on behalf of 10 individuals re: Timber Branch II Subdivision (Opposing the issuance of a Corp 404 permit to destroy 85 acres of wetlands for a subdivision in St. Tammany, a proposal previously objected to by EPA.) (October 3, 2001)

ACCOMPLISHMENTS

LAWSUITS WON OR SETTLED FAVORABLY

1. The Clinic represented the Alliance for Affordable Energy in an adjudicatory hearing that led to negotiation of a “Customer’s Bill of Rights” for all New Orleans utility users. This Bill of Rights is designed to save lives by preventing the provider (Entergy) from cutting off electricity to customers who cannot pay their bills during the hot summer months, when heat-related deaths are high.
2. The Clinic represented the Bartholomew Woods Neighborhood Association in a case against Cleco, a merchant power plant in Perryville, Louisiana. After months of negotiation, the parties agreed to settle the case after Cleco agreed to install additional water pollution control technology.
3. On behalf of a local musician, Rudy Mills, the Louisiana Audubon Council, and the Sierra Club, the Clinic successfully challenged a water quality certification issued to Hancock County Port and Harbor Commission that would have allowed the dredging of mercury contaminated sediments in Little Lake. The Court overturned the permit, halting the dredging of the contaminated sediments.
4. As a result of public comments on behalf of the Louisiana Audubon Council and the Sierra Club, the U.S. Army Corps of Engineers denied a permit application for the Timber Branch II subdivision that would have destroyed 85 acres of wetlands.
5. The Corps also withdrew the GGI Liquidating Inc. permit application and modified it to accommodate the landowners’ concerns raised by the Clinic in public comments about restoring the impacted wetlands.
6. The Clinic represented the Louisiana Environmental Action Network in a case against Acadia Power, a merchant power plant in Eunice, Louisiana. After months of negotiation, the parties agreed to settle the case after Acadia agreed to limit ground water use, monitor use of ground water and surface water, and provide detailed monitoring data to community activists.
7. As a result of a Clean Air Act lawsuit the Clinic filed on behalf of the Louisiana Environmental Action Network, the U.S. Environmental Protection Agency acknowledged that a five-parish area centered around Baton Rouge, Louisiana missed its deadline for attainment of the health protection standard for ozone pollution. The effect of EPA’s action will be to reclassify the “attainment status” of the Baton Rouge area from “serious” to “severe” nonattainment. This change will increase the stringency of regulations that govern emissions of volatile organic compounds in the area. EPA, however, is attempting to delay the effective date of its decision. Both the Clinic and LEAN, therefore, have their work cut out for them in an ongoing battle to require attainment of minimum health protection standards in the Baton Rouge area.
8. On behalf of the Louisiana Environmental Action Network, the Clinic sent out eighteen citizen suit notices to companies along the Bogue Falaya River, a polluted water body that feeds into Lake Pontchartrain and does not meet its designated uses. The letters gave official notice of the Clinic’s intent to sue them for violating their water permits, unless they

provided proof of compliance. To date, one facility corrected its problem with their disinfection unit, thus no longer polluting the river. Four other facilities responded to the notices with promises to correct the problem. In the fall, the student attorneys will follow-up with these companies to verify their compliance or evaluate for litigation if necessary. In addition, after receiving copies of our notice letters, LDEQ initiated enforcement actions against a few of the facilities. The remaining cases require further evaluation by the student attorneys to determine whether litigation is necessary to ensure compliance with the Clean Water Act.

HONORS

1. On November 17, 2001 the Louisiana Environmental Action Network honored the Clinic with the Ramona Stevens Solidarity Award for “building bridges between workers and their communities.”
2. On December 6, 2001 the City of New Orleans awarded Rebecca Dayries with a Certificate of Appreciation “in thankfulness for [her] contribution to [the] City.”

OTHER ACCOMPLISHMENTS

1. The Clinic launched its comprehensive web page, www.tulane.edu/~telc, in the fall of 2001.
2. The Community Outreach Program created a “Community Advisory Board” with members from community organizations and environmental groups to advise the Community Outreach Program, focusing on existing organizing strategies and ideas for strengthening the public information services and community assistance efforts of the Clinic.

**SPEAKING ENGAGEMENTS/PRESENTATIONS/SPECIAL EVENTS
2001-2002**



Student Attorney Zahira Washington
holding an alligator at Alligator Bayou.

1. **Alligator Bayou with Louisiana Environmental Action Network**—On October 26, 2001 Clinic took a 'field trip' to Alligator Bayou near Baton Rouge with Louisiana Environmental Action Network and its member-groups, which gave the students the opportunity to meet many of their clients and tour the beautiful swamplands of Louisiana.
2. **Mayor's Environmental Breakfast**—Rebecca Dayries spoke at the November 9, 2001 meeting of the Mayor of New Orleans' Environmental Breakfast. She discussed environmental justice in Louisiana and the resources the Clinic offers to low-income and minority communities in Louisiana.
3. **Louisiana Environmental Action Network Annual People's Conference**—On November 17, 2001, Adam Babich spoke at the conference about "Life with Rule XX," the role of the Clinic, and the services the Clinic offers to low-income and minority communities in Louisiana.



Deputy Director
Elizabeth Teel

4. **Title V Citizen Training**—Adam Babich conducted the "How to Write Effective Comment Letters" workshop and Elizabeth Teel, Deputy Director, conducted the "Environmental Justice" session at the training on December 1 - 2 in Houston, Texas. The purpose of the training was to teach citizens how to participate in the air permitting process by reviewing air permit applications and writing public comments.



Dean Lawrence Ponoroff, Lisa Lavie Jordan, Adam Babich, Pat Melancon, and Lifetime's Mary Dixon, 12/10/02

5. **"Taking Back Our Town"**—Premier of Lifetime Television's movie "Taking Back Our Town," featuring the Clinic and St. James Citizens for Jobs and the Environment's battle against Shintech. The Tulane Law School held a viewing of the movie December 10, 2001 to highlight the work of the Clinic and to recognize the clients' successful efforts.
6. **United States Commission on Civil Rights**—Elizabeth Teel, Deputy Director of the Clinic, testified and submitted a report to the Commission about the state of environmental justice in Louisiana on January 11, 2002 in Washington D.C.
7. **Environmental Health Seminar**—Rebecca Dayries gave a presentation on March 7, 2002 to the environmental health seminar at the Tulane School of Public Health on environmental justice in Alsen, Louisiana.
8. **Tulane Environmental Law & Policy Conference**—Adam Babich spoke at the annual Tulane Environmental Law & Policy Conference March 8, 2002, discussing the implications of the Rule XX changes on the Clinic five years after the Shintech controversy.



Clinic Director Adam Babich at the LEAN conference 11/17/01

9. **Columbia Law Students**—The Clinic hosted ten law students from Columbia Law School (New York) during their spring break. The students completed 40 hours of their pro bono requirements investigating Clean Water Act violations along the Lower Mississippi River Corridor and conducting legal research for the staff attorneys.
10. **Clinic Show & Tell**—The Clinic held its first annual “Show & Tell” on April 3, 2002 to increase the Clinic’s transparency within the Law School and the University. Three student attorneys highlighted the cases they were involved in and Adam Babich presented a power point presentation that outlined the Clinic’s mission, structure, and client in-take.
11. **Global Environmental Crisis class**—On April 9, 2002, Rebecca Dayries spoke to an undergraduate class at Loyola University about environmental justice in Louisiana and the work the Clinic does on behalf of low-income and minority communities.
12. **Advanced Title V Citizen Training**—Adam Babich conducted a session on the Clean Air Act’s new source review requirements at the training in Washington D.C. The U.S. Environmental Protection Agency and the Earth Day Coalition sponsored this event, held May 13-14, 2002.
13. **Meeting with Chinese delegation of hazardous waste specialists**—Adam Babich met with eight delegation members from mainland China on July 2, 2002 regarding environmental justice issues in Louisiana and how the Clinic represents the poor against polluters and government agencies.

**FUNDING SOURCES
2001-2002**

Tulane University	\$212,352
The McKnight Foundation	\$ 40,000
The Belvedere Fund of the Rockefeller Family Fund	\$ 25,000
The Lawrence Foundation	\$ 5,000
Individual Donation	\$ 10,000
Recovery of Attorneys Fees	\$ 48,684

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.

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