

# Tulane Environmental Law Clinic



## ANNUAL REPORT 2005-2006

6329 Freret Street  
New Orleans, Louisiana 70118

Phone: 504-865-5789

Fax: 504-862-8721

Email: [ababich@law.tulane.edu](mailto:ababich@law.tulane.edu)

Web: [www.tulane.edu/~telc](http://www.tulane.edu/~telc)

---

## MESSAGE FROM THE DIRECTOR

---

July 28, 2006

Dear Colleagues:

We're back! Our 2004-2005 annual report was on its way to the printer at the end of August 2005, when the Tulane Environmental Law Clinic's staff and student attorneys evacuated New Orleans and scattered. By the time our offices re-opened in late November, that report looked too much like ancient history to print, although we will make it available on our web site. Now—more than six months after our student attorneys returned to the Clinic for a productive spring semester—it is a pleasure to get a new annual report into print.

Although Hurricane Katrina separated the Tulane Environment Law Clinic staff geographically last fall, we continued the Clinic's work. I spent most of those months operating out of the University of Texas. Staff attorney Jill Witkowski, who joined the Clinic two weeks before the storm, also came to Austin. Staff Attorney Corinne Van Dalen was based in Dallas, Community Outreach Director Beatriz Pérez was in Florida, and Deputy Director Karla Raettig went to Portland. (Karla has since left to join the Environmental Integrity Project in D.C. and Elizabeth Livingston de Calderón has joined us.) Together we struggled to keep up-to-date on our docket without student attorneys. The experience highlighted the importance of collegiality in law practice as we and our opponents helped each other through logistical issues, such as missing documents and impractical deadlines.

"May you live in interesting times" is supposed to be a curse. But the support of colleagues and funders, who reached out to help Tulane Law School and the Clinic through difficult times, has been a blessing. And it is a privilege for the Clinic's staff and student attorneys to now be in a position to help clients respond to old and new challenges. By the time you read this, a fresh crop of student attorneys will be pouring new energy and creativity into that task. So we expect the coming year to be both interesting and productive.

Very truly yours,

A handwritten signature in black ink, appearing to read "Adam Babich". The signature is fluid and cursive, with a large initial "A" and a long, sweeping underline.

Adam Babich, Clinic Director

---

## MISSION

---



**Student attorney Alexander Williamson (center) with staff of the Clinic and the Gulf Restoration Network**

- (1) To train effective and ethical lawyers by guiding law students through actual client representation;**
- (2) To represent those who could otherwise not afford competent legal help on environmental issues. The Clinic broadens public participation in environmental decision making by giving a voice to clients who would not be heard otherwise; and,**
- (3) To bolster community members' capacity to help themselves in their ongoing efforts for a cleaner and healthier environment.**

---

## BACKGROUND AND OVERVIEW

---

Tulane University Law School started its Environmental Law Clinic in 1989 to offer students the real-world experience of representing people who otherwise could not afford to enforce their rights under state and federal environmental laws. Having now operated for nearly 16 full academic years, the Clinic is part of a first tier environmental law program and has become Louisiana's premier public-interest environmental legal services organization. On behalf of their clients, Clinic student and supervising attorneys litigate environmental "citizen suits" to abate industrial pollution, appeal permits for environmental pollution or destruction of wetlands, challenge agency regulations that fall short of legislative mandates, and prod agencies to perform statutory duties.

Private foundations and contributors provide funding for the Clinic to offer the high quality legal assistance its clients need, supplementing Tulane Law School's contribution to the Clinic's budget. Because the Clinic's twenty-six student attorneys—who receive credit but no compensation—do most of the Clinic's legal work, the Clinic produces tremendous results with only six paid staff members. The end result is a thriving Clinic that meets all of the Clinic's goals—to train effective and ethical lawyers by guiding students through actual client representation, to represent individuals, community organizations, and government bodies who could not otherwise afford competent legal help, and to enable community members to help themselves in their ongoing efforts for a cleaner and healthier environment. The Clinic contributes to the Louisiana legal community both by training strong, ethical litigators and by helping the Bar meet its obligation, under the legal profession's rules, to ensure that access to justice is not "denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval."



**Student attorney Clay Garside with members of St. Bernard Citizens for Environmental Quality**

Since its inception, the Clinic has provided free legal representation and community outreach to more than 180 community organizations, lower-income individuals, and local governments throughout Louisiana. By representing clients who have historically been left out of governmental processes, the Clinic has become a powerful force for environmental reform.

---

## CASE SELECTION

---

To provide the best practical educational experience for its students, the Clinic generally operates at full capacity. Consistent with its client-driven mission, the Clinic evaluates potential new matters primarily on a “first-come, first-served” basis. The Clinic 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.

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 an extension of existing law. Once a potential case has been screened by the Clinic staff and meets the above criteria, it then is presented to the Clinic’s Legal Advisory Board (listed below) for review. The Board reviews prospective cases and approves or disapproves of cases by a majority vote of its members. 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.

There is no requirement or expectation that the Board, Clinic staff, or student attorneys agree with the clients’ lawful objectives. The Clinic will not, however, knowingly accept a case that requires the Clinic to advance positions it believes to be unjust or irresponsible, or that it otherwise cannot competently advocate.

---

## LEGAL ADVISORY BOARD

---

The Legal Advisory Board’s primary function is to review and approve or disapprove the Clinic’s acceptance of individual cases and to provide Clinic staff with advice on Clinic matters, e.g., issues, cases, citizen outreach, fundraising, and publicity.

Professor Paul Barron

Professor Jane L. Johnson

Kristen H. Engel, Esq.

Michele Merkel, Esq.

Doris Falkenheiner, Esq.

Ronald Simon, Esq.

Professor Oliver A. Houck

---

## CLIENTS

---

Many of the Clinic's clients have struggled for years to improve environmental protection and the quality of life for Louisiana residents. The Clinic's representation of such clients means that access to the courts becomes one of their available tools. Each client, however, remains responsible for keeping an eye on the bigger picture. In other words, the Clinic's job is to serve as a tool available to clients who struggle to protect public health, welfare, and the environment. The Clinic does not take over, or direct, the struggle. The Clinic represented the following clients, along with several individuals, during the 2005 - 2006 academic year:



**LEAN Director Marylee Orr (second from right) with Baton Rouge Mayor "Kip" Holden, Wilma Subra and student attorney Bryan Brody**

Assumption Parish People's Environmental  
Action League

Atchafalaya Basinkeeper Organization

Austin Civil War Roundtable

Bogue Lusa Waterworks

Gulf Restoration Network

Holy Cross Neighborhood Association

Louisiana Audubon Council

Louisiana Bucket Brigade

Louisiana Charter Boats Association

Louisiana Environmental Action Network

National Refinery Reform Campaign

Oakville Community Action Group

Save Our Neighborhoods

Sierra Club-Delta Chapter

St. Bernard Citizens for Environmental Quality

Treme Committee for Environmental Justice

---

## STAFF

---

### **Adam Babich, Director**

Adam Babich is an associate professor at Tulane Law School. He received his J.D. from Yale Law School in 1983 and his B.A. from Dickinson College in 1977. He has served as an assistant attorney general for the Colorado Attorney General's CERCLA Litigation Section, as adjunct attorney for the Environmental Defense Fund, as partner in a Denver law firm, as editor-in-chief of the Environmental Law Institute's Environmental Law Reporter, and as a law clerk for the Colorado Supreme Court. Mr. Babich has taught as an adjunct professor at Georgetown University Law Center, American University and the University of Denver. He has directed the Clinic since May 2000.

### **Karla Raettig, Deputy Director (through October 2005)**

Karla Raettig spent two years at Earthjustice in Seattle before joining the Clinic staff in 2001. Before working for Earthjustice, she clerked for U.S. Magistrate Judge Janice M. Stewart in the District of Oregon. In 1997, Ms. Raettig graduated from Lewis & Clark Law School, *magna cum laude*, with an environmental certificate. She served as editor-in-chief of Lewis and Clark's environmental law journal and as a teaching assistant for the law school's legal analysis and writing program. In December 2004, Ms. Raettig received an LL.M. in Energy and Environmental Law, *with distinction*, from Tulane Law School.

### **Corinne Van Dalen, Staff Attorney**

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

### **Jill Witkowski, Staff Attorney**

Jill Witkowski is a graduate of Washington University School of Law. She started her legal career with Skadden, Arps, Slate, Meagher & Flom in New York City. Immediately before joining the Clinic, she served as a judicial law clerk for Judge Virginia M. Hernandez Covington of the federal Middle District of Florida. She joined the legal staff of the Clinic in August 2005.

### **Elizabeth Livingston de Calderón, Staff Attorney**

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

classical languages from Tulane University and a B.A. from Connecticut College. She joined the staff of the clinic in May 2006.

**Beatriz Pérez, Community Outreach Director**

Beatriz Pérez received a B.S. in Biology and Environmental Studies from Tulane University and a master's degree in Ecology from the University of California at Santa Barbara. She has held a number of positions in environmental science, environmental resource management, and environmental education. Since returning to New Orleans in 1997, she has worked with the Xavier Center for Environmental Programs and with the U.S. Army Corps of Engineers' Regulatory Program as a Senior Project Manager. In this capacity, she implemented portions of the Clean Water Act and other key environmental regulations, representing the public interest and working with individuals, organizations and government agencies at the local, state and federal levels. Ms. Pérez joined the staff of the Clinic in February 2005.

**Linda Swanner, Legal Assistant**

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

**Angela James Jenkins, Legal Assistant (through February 2006)**

Angela James Jenkins joined the Clinic in April 2004 after working at Tulane Law School's Department of Continuing Legal Education (CLE). Prior to working with CLE, she was employed by Orleans Parish Juvenile Court. Mrs. Jenkins has also held internships at the office of U.S. Senator John Breaux and the Mayor's office. She earned a Bachelor of Science degree in Criminal Justice from Southern University at New Orleans.

---

## STUDENT PRACTICE

---

Each year, the Clinic trains 26 third-year law students to practice environmental law. The Louisiana Supreme Court and the U.S. District Courts for the Eastern, Western, and Middle Districts of Louisiana have adopted "student practice" rules that authorize Clinic students to appear, argue, and present witnesses. This authorization is a privilege, carrying with it the responsibility to provide zealous, diligent representation that meets the highest standards of professional behavior. Clinic students are sworn to place "the interests of the client" above their "personal interests or clinic interests." The opportunities and responsibilities afforded by these court rules enhance the Clinic's ability to provide students with real-world litigation experience.



**Student attorney Allison Cook compiles documents for a Clean Air Act citizen enforcement suit**

### **STUDENT ATTORNEYS**

Marcela Arrocha

Kimberly Bender

Ted Boehm

Sean Brett

Fatimah Conley

Christina Cowart

John Frase

Evan Goldberg

Seth Hennes

Michael Higgins

Timothy Holliday

James Holmes

Houston Howell

Katherine Iannuzzi

Joseph Kraft

Neesha Kulkarni

Tina Mohanty

Jennifer Moore

Elizabeth Pugh

Joseph Rodriguez

Katherine Simkins

Maria-Patricia Syquia

Abaigeal Van Deerlin

Alexander Williamson

### **RESEARCH ASSISTANTS**

Matthew Fraser

Houston Howell

Kathryn Wasik

### **INTERNS**

Chao-Ting Liu

Matt Segraves

---

## LEGAL WORK AND ACCOMPLISHMENTS

---

---

### CLEAN AIR INITIATIVE

---

On behalf of and in consultation with the Clinic's clients, the Clean Air Initiative targets toxic air pollution in Louisiana from industrial facilities, including oil refineries and chemical and petrochemical manufacturing facilities, which are overwhelmingly concentrated in low-income, minority communities throughout Louisiana. The Initiative's goals are to abate dangerous air emissions, deter industry violations of the Clean Air Act, and empower citizens to participate effectively in the permitting and enforcement processes. The Clinic worked on the following clean air matters during the 2005 - 2006 academic year:



**Refinery next to national cemetery in Chalmette, Louisiana**

*St. Bernard Citizens For Environmental Quality and Louisiana Bucket Brigade v. Chalmette Refining, LLC*, No. 04-0398 (Eastern District of Louisiana, February 12, 2004) (Citizen suit seeking civil penalties and an injunction against (1) excessive oil refinery emissions due to equipment breakdowns; (2) violations of permit limits for benzene; (3) violations of performance standards for flares; and (4) reporting violations, under the Clean Air Act and the Emergency Planning and Community Right to Know Act) In February 2005, the Court granted our clients summary judgment that Chalmette Refining had violated the Clean Air Act on 34 separate occasions and was likely to continue its violations. And in October 2005, the Court granted our clients summary judgment on an additional 2,629 violations. Also in response to the second motion for summary judgment, on November 16, 2005, the Court entered a stipulated order whereby Chalmette Refining agreed to bring its benzene tanks into compliance with its permit limits. The case is stayed until July 31, 2006 while settlement negotiations between our clients and Chalmette Refining continue.

*Louisiana Environmental Action Network v. U.S. Environmental Protection Agency and Michael O. Leavitt*, (Court of Appeals for the D.C. Circuit, June 29, 2004) (Challenging EPA's plan to revoke the Clean Air Act's 1-Hour Ozone Standard). In October 2005, the Clinic filed a

joint brief with other national environmental organizations (“environmental petitioners”), urging the Court to overturn EPA’s approach. EPA’s new rule, which took effect June 15, 2005, eliminates the 1-hour ozone attainment standard. The result is the reclassification of the Baton Rouge area from “severe” to “marginal” non-attainment, even though (1) the area has never met any iteration of the health protection standard for ozone pollution, and (2) the Clean Air Act provides that residents of any area that failed to meet the ozone standard by November 1999 would be entitled to the safeguards that the Clean Air Act mandates for “severe” non-attainment areas. The new rule also eliminates industry fees as an economic incentive for attainment; narrows the list of sources required to apply state-of-the-art technology to new emissions; and reduces required emission offset ratios. The parties completed briefing in June 2006. The Court has not yet scheduled oral argument.

*Louisiana Environmental Action Network v. Johnson*, No. 05-CV-184 (Middle District of Louisiana, March 18, 2005) (Seeking to compel EPA to rule on LEAN’s petition for an EPA objection to an LDEQ air permit that allows ExxonMobil to increase emissions in the Baton Rouge area based on speculative future reductions) This case was settled in December 2005 after EPA ruled on LEAN’s petition.

*Comments on Behalf of St. Bernard Citizens for Environmental Quality and Louisiana Bucket Brigade re: Chalmette Refining, LLC* (Commenting on the lack of analysis in Chalmette’s application for a Part 70 air permit for the Utility Areas of its refinery. The comments request that LDEQ require Chalmette to correct its application to include facts necessary for LDEQ to conduct a meaningful evaluation consistent with its role as a public trustee of the environment.) (August 8, 2005)

*Comments on Behalf of Louisiana Environmental Action Network, Atchafalaya Basinkeeper, Gulf Restoration Network, Louisiana Audubon Council, and Dean A. Wilson* (Objecting to LDEQ’s issuance of a Clean Air Act Part 70 permit to the PPG Chlor-Alkali Plant in Lake Charles, Louisiana unless LDEQ includes PPG’s commitment to eliminate use of mercury at the facility by mid-2007 as an enforceable condition of the permit) (August 25, 2005)

*Comments on Behalf of St. Bernard Citizens for Environmental Quality and Louisiana Bucket Brigade* (Objecting to an EPA proposal to deny members of the public the right to review those portions of startup, shutdown, and malfunction plans under the Clean Air Act) (September 12, 2005)

*Comments on Behalf of St. Bernard Citizens for Environmental Quality and Louisiana Bucket Brigade on Proposed Consent Decree Between the United States, the State of Louisiana, and Chalmette Refining, LLC* (Suggesting improvements to a proposed consent decree concerning Clean Air Act violations at the ExxonMobil-operated Chalmette Refinery) (November 18, 2005)

*Comments on Behalf of St. Bernard Citizens for Environmental Quality, Louisiana Bucket Brigade, and National Refinery Reform Campaign on a Proposed Settlement Agreement Between the Louisiana Department of Environmental Quality and Chalmette Refining, LLC* (Objecting to LDEQ’s proposal to supplement a federal consent decree with a side-agreement granting ExxonMobil and others broad releases from liability in return for the donation of air monitors to the LDEQ) (November 28, 2005)

*Comments on Behalf of St. Bernard Citizens for Environmental Quality and Louisiana Bucket Brigade to the Louisiana Department of Environmental Quality* (Challenging two proposed air

permits for two units--No. 2 Crude/Coker Units and Wastewater Treatment Plant--within the oil refinery owned by Chalmette Refining because LDEQ changed emission limits without undergoing proper permit modification procedures and failed to require sufficient monitoring requirements) (January 17, 2006)

*Petition on Behalf of St. Bernard Citizens for Environmental Quality and Louisiana Bucket Brigade to the U.S. Environmental Protection Agency* (Asking EPA to object to a proposed air permit issued by the Louisiana Department of Environmental Quality to Chalmette Refining for the Utilities Area of its oil refinery in Chalmette, Louisiana) (January 26, 2006)

*In re Waste Management of Louisiana, LLC, Woodside Landfill Air Permitting Decisions*, No. 529640 (1<sup>st</sup> Circuit Court of Appeal, February 16, 2006) (Challenging the district court's affirmation of LDEQ's issuance of an exemption from the obligation to obtain Clean Air Act "prevention of significant deterioration" review for a landfill gas collection and control system and issuance of a Part 70 permit for that system and for a bioremediation area.) This case will be briefed in July 2006.

*St. Bernard Citizens for Environmental Quality and Louisiana Bucket Brigade v. Louisiana Department of Environmental Quality*, No. 542707 (19<sup>th</sup> Judicial District Court, April 24, 2006) (Appealing a Louisiana Department of Environmental Quality settlement with Chalmette Refining, LLC) We are awaiting a briefing schedule for this case.

*Comments on Behalf of St. Bernard Citizens for Environmental Quality and Louisiana Bucket Brigade to the Louisiana Department of Environmental Quality* (Objecting to eight separate Title V Clean Air Act permits proposed for Chalmette Refining, LLC) (March 14 and May 15, 2006)

*Petition on Behalf of St. Bernard Citizens for Environmental Quality and Louisiana Bucket Brigade to the U.S. Environmental Protection Agency* (Asking EPA to object to two Title V permits issued by the Louisiana Department of Environmental Quality to Chalmette Refining, LLC for its No. 2 Crude/Coker Units and Wastewater Treatment Plant of its oil refinery in Chalmette, Louisiana) (May 31, 2006)

---

## WATER QUALITY PROTECTION INITIATIVE

---

The Water Quality Protection Initiative addresses water pollution problems in Louisiana by enabling citizens to pressure the responsible government agencies to protect water resources and to enforce the Clean Water Act directly against polluters. The Water Quality Protection Initiative's goals are to reform the state's water protection program, to abate harmful water discharges, and to empower citizens to participate effectively in permitting and enforcement processes. Part of this work includes serving as legal counsel on LEAN's Lower Mississippi Riverkeeper project, part of Robert F. Kennedy's national Waterkeeper Alliance. The Clinic worked on the following matters during the 2005 - 2006 academic year:



Alligator Bayou

*Gulf Restoration Network, Sierra Club-Delta Chapter and Louisiana Charter Boats Association v. U.S. Department of Transportation*, No. 05-60321 (5<sup>th</sup> Circuit, April 15, 2005) (Requesting that the U.S. Department of Transportation review its decision to issue a permit to Gulf Landing, LLC to operate a liquefied natural gas facility without analyzing cumulative impacts from other proposed facilities in the Gulf of Mexico. All of the proposed facilities will use "open loop" technology to warm the natural gas, which has significant impacts on vital Louisiana fisheries.) Although our clients' petition was denied in June 2006, since the Clinic filed this lawsuit, Louisiana Governor Blanco has announced her opposition to future use of "open loop" technology.

*Supplemental Notice on Behalf of Louisiana Environmental Action Network and the Austin Civil War Roundtable re: Dolet Hills Lignite Company* (Supplementing a June 6, 2005 notice of intent to file a citizen suit under the Clean Water Act with failures to report as required by the mine's permit) (August 1, 2005)

*Comments on Behalf of Atchafalaya Basinkeeper, Sierra Club-Delta Chapter, and Stacy Sauce to the Louisiana Department of Environmental Quality* (Objecting to LDEQ's proposed permit on Carizzo Oil & Gas' application for a permit to dredge in the Atchafalaya Basin) (January 26, 2006)

*Notice on Behalf of Louisiana Environmental Action Network of Intent to Sue Jefferson Parish under the Clean Water Act (Alleging violations of the Clean Water Act at the Parish's water treatment plant in Marrero, Louisiana) (April 28, 2006)*

*Comments on Behalf of Holy Cross Neighborhood Association, Gulf Restoration Network, and Louisiana Environmental Action Network to the U.S. Army Corps of Engineers (Objecting to the Corps' proposed maintenance dredging of the Gulf Intracoastal Waterway, Inner Harbor Navigation Canal, Orleans Parish, Louisiana) (June 14, 2006)*

*Comments on Behalf of Holy Cross Neighborhood Association, Gulf Restoration Network, and Louisiana Environmental Action Network to the Louisiana Department of Environmental Quality (Objecting to State Water Quality Certification of the Corps' proposed maintenance dredging of the Gulf Intracoastal Waterway, Inner Harbor Navigation Canal, Orleans Parish, Louisiana) (June 14, 2006)*

*Comments on Behalf of Louisiana Environmental Action Network to the Louisiana Department of Environmental Quality (Objecting to a draft general permit proposed by the LDEQ for discharges from light commercial facilities) (June 19, 2006)*

*Bogue Lusa Waterworks, et al. v. Louisiana Department of Environmental Quality, No. 474-677 (19<sup>th</sup> Judicial District Court, November 20, 2000)* (Seeking, on behalf of a municipal waterworks, remand of the Louisiana Department of Environmental Quality's approval of an operating permit to Calpine Corporation for a natural gas-fired power plant in Washington Parish, Louisiana) In February 2001, the Court remanded the permit decision to LDEQ, but retained jurisdiction over the case. LDEQ reaffirmed its permit decision in May 2002. Next, an appeal of an issue that does not concern the Waterworks delayed the case. After resolution of that appeal, the Court scheduled oral arguments for October 2005. Hurricane Katrina disrupted this schedule, however, and the Court instead held a status conference in December 2005. Shortly after that, Calpine declared bankruptcy and informed the Court that the bankruptcy act automatically stays this case. Calpine has not completed the power plant at issue, so delays in this case have not harmed the Waterworks.

---

## ENDANGERED WETLANDS INITIATIVE

---

Wetland loss in coastal Louisiana has reached catastrophic proportions, with current losses of 25-35 square miles per year. The disappearance of Louisiana's wetlands threatens the productivity of its coastal ecosystems, the economic viability of its industries, and the safety of its residents. The Endangered Wetlands Initiative uses client-directed administrative comments, litigation, and outreach to enhance citizen efforts to protect and restore wetlands from harmful projects and to empower citizens to effectively participate in wetlands regulation and enforcement. On behalf of its clients, the Clinic worked on the following matters within its Endangered Wetlands Initiative during the 2005 - 2006 academic year:



**Timber Branch in St. Tammany Parish, Louisiana**

*Loretto O'Reilly, Hazel Sinclair and Kelly Fitzmaurice v. U.S. Army Corps of Engineers*, No. 04-940 (Eastern District of Louisiana, April 2, 2004) (Challenging the Corps' approval of a proposed subdivision that would destroy 85 acres of forest, of which 39.5 acres are wetlands, in St. Tammany Parish, without preparing an Environmental Impact Statement) On August 10, 2004, the court ruled that the Corps failed to prepare an adequate assessment of the potential damage to the environment before it issued a permit to the developers. The ruling effectively stops the project from moving forward until the Corps prepares an Environmental Impact Statement, as required by the National Environmental Policy Act. The court created precedent that should enhance protections for Louisiana wetlands when it stated that the Corps' Environmental Assessment "contain[ed] no support for the Corps' conclusion that the mitigation measures would remove or reduce the identified adverse impacts of the project" and failed "to give an in depth analysis to the cumulative effects of the project." The Corps and the Intervenor-Defendant landowners appealed the decision to the Fifth Circuit Court of Appeals. During December and January 2004, the parties engaged in intensive settlement discussions, but those discussions were unsuccessful and the case was briefed in March and April 2005. The Clinic presented its oral argument in November 2005 to preserve the district court's injunction, and we are awaiting a decision by the Court.

*Oakville Community Action Group v. Plaquemines Parish Council*, No. 2005-CA-1501 (4<sup>th</sup> Circuit Court of Appeal, June 6, 2005) (Appealing the district court's decision to cede its

jurisdiction and transfer the case to the wrong state agency) The case challenges a permit decision allowing Industrial Pipe to destroy over 8 acres of unique bottomland hardwood wetlands and expand its current landfill, which is located immediately adjacent to the Oakville Community. Oral arguments were presented in July 2006.

*Comments on Behalf of Atchafalaya Basinkeeper, Sierra Club-Delta Chapter, and Stacy Sauce to the U.S. Army Corps of Engineers (Objecting to the Corps' proposed permit on Carizzo Oil & Gas' application for a permit to dredge in the Atchafalaya Basin) (January 26, 2006)*

---

## COMMUNITY PRESERVATION INITIATIVE

---

The Community Preservation Initiative, on behalf of environmental and community groups, helps Louisiana residents defend their communities and environment against damage from poorly planned development. At issue are land use decisions, environmental justice, historic preservation, hazardous waste disposal, and sprawl that threaten the historic value, cultural fabric, and environmental integrity of communities. The Clinic's current Community Preservation docket includes cases that (1) strive to empower citizens to gain greater control over decision-making in their community and (2) seek to preserve the unique character of Louisiana communities. On behalf of citizens and community organizations, the Clinic represented communities in the following matters during the 2005 - 2006 academic year:



**Industrial Pipe Landfill abutting playground in  
Oakville, Plaquemines Parish, Louisiana**

*Holy Cross Neighborhood Association, Louisiana Environmental Action Network and Gulf Restoration Network v. U.S. Army Corps of Engineers*, No. 03-0370 (Eastern District of Louisiana, February 6, 2003) (Seeking abatement under the Resource Conservation and Recovery Act of the Corps' plans to dredge contaminated sediments in the Inner Harbor Navigational Canal and seeking a supplemental environmental impact statement under the National Environmental Policy Act to analyze the effects of dredging and disposal of dredged sediments) The Clinic filed a motion for summary judgment on the NEPA claim on March 22, 2005, and oral arguments on that motion were presented in July 2006.

*Petition on Behalf of Louisiana Environmental Action Network, Jeanette Tate and the Austin Civil War Roundtable* (Requesting that the Louisiana Department of Natural Resources declare the Mansfield Battlefield unsuitable for strip mining because current mining practices threaten the historical significance of the Civil War battlefield) (Feb. 18, 2005) A hearing on the petition is scheduled for October 6, 2006.

*Oakville Community Action Group and Louisiana Environmental Action Network v. Industrial Pipe, Inc.*, No. 05-30462 (5<sup>th</sup> Circuit Court of Appeals, April 28, 2005) (Appealing the district court's decision to dismiss a citizen enforcement suit against Industrial Pipe for failing to comply with federal and state solid waste regulations) The Plaintiffs-Appellants claim that Industrial Pipe's waste processing facility is a Municipal Solid Waste Landfill subject to Resource Conservation and Recovery Act regulations; that Industrial Pipe has violated RCRA regulations; and that Industrial Pipe violated state solid waste regulations by not complying with financial assurance requirements for closure and post-closure care of the landfill and by not carrying adequate liability coverage for its operations. We are currently awaiting the Court's decision in this case.

*Oakville Community Action Group, Glynn Mayfield and Louisiana Environmental Action Network v. Louisiana Department of Environmental Quality*, No. 2005-CA-1365 (1<sup>st</sup> Circuit Court of Appeal, May 4, 2005) (Appealing the District Court's decision to uphold LDEQ's issuance of solid waste processing and disposal permits to Industrial Pipe, Inc.) On May 5, 2006, the Court ruled against our clients in this case.

*In re Tree Enterprises*, No. 536676 (19<sup>th</sup> Judicial District Court, September 23, 2005) (Appealing a Division of Administrative Law hearing officer's remand to LDEQ of that agency's denial of a permit to a solid waste facility that LDEQ concluded "may result in the fallout of ash to neighboring properties, causing an excessive and unnecessary nuisance") We are currently awaiting a briefing schedule for this case.

*Notice on Behalf of Louisiana Environmental Action Network of Intent to Sue the U.S. Army Corps of Engineers* (Alleging that contaminated sediments from the London Avenue Canal levee breach at Pratt Drive near Robert E. Lee Boulevard may present an imminent and substantial endangerment to human health and the environment. LEAN seeks testing and analysis to determine whether contamination of the sediments poses a significant risk to public health and, if so, a cleanup to eliminate that threat.) (March 31, 2006, rev'd April 3, 2006)

*Notice on Behalf of Louisiana Environmental Action Network of Intent to Sue the U.S. Army Corps of Engineers, the City of New Orleans, and AMID / Metro Partnership, LLC under the Resource Conservation and Recovery Act* (Alleging violations of federal regulations that proscribe safe landfill practices and disposal and prohibit open dumping. LEAN also noticed the Corps with an additional claim under RCRA for contributing to waste disposal practices that may endanger health and the environment.) (April 4, 2006, rev'd April 6, 2006)

*In re Belle Co., LLC, Type I & II Solid Waste Landfill Proceedings under the Louisiana Environmental Quality Act*, No. 2006-CA-1077 (1<sup>st</sup> Circuit Court of Appeal, April 19, 2006) (Belle Co. appeals the district court's decision to dismiss its Petition for Writ of Mandamus requiring the Secretary of the Louisiana Department of Environmental Quality to issue a decision regarding its solid waste permit) On behalf of our client, Assumption Parish People's Environmental Action League, the Clinic filed a motion on April 19, 2006 to dismiss this case because Belle Co.'s appeal is untimely under the Louisiana Code of Civil Procedure. If the Court does not grant the motion to dismiss, the Clinic will file a brief on the merits of the case by September 5, 2006.

---

## SPEAKING ENGAGEMENTS, OUTREACH AND PUBLICATIONS

---

- Coordinated and participated in Wetlands Strategy Group meetings with a network of clients working on wetlands protection and coastal restoration issues. The Outreach Director plans the meetings, creates the agenda and follows up on action items at the direction of the group.
- Clinic Director Adam Babich was interviewed for a July 15, 2005 episode of PBS's NOW program on the safety of chemical plants and oil refineries.
- Participated in a conference call with environmental organizations and the media about the importance of the National Environmental Policy Act, prior to a public hearing held in Natchitoches, Louisiana by a Congressional task force. The U.S. House Natural Resources Committee is considering weakening this key legislation.



**Student Attorney Whiton Paine with clients  
Barry Kohl and Pam Dashiell**

- Participated in a conference call regarding a landfill proposed by Mikeebo, Inc. in Caddo Parish. Also on the call were Commissioner Rose McCulloch, some of her constituents, and representatives of LDEQ.
- Spoke with a representative of Community Catalyst, a Boston-based health advocacy organization, as part of a study on the state of health advocacy and related issues in various states in the U.S.
- Attended an August 26, 2005 meeting of the Louisiana State Bar Association's Committee on Professionalism and Quality of Life, held in New Orleans.
- Co-sponsored the annual Louisiana Environmental Action Network People's Conference, held in Baton Rouge on November 12, 2005. The conference brings together a diverse group of stakeholders to discuss current environmental issues in the state.
- Spoke to staff and canvassers of Texas Campaign for the Environment's Dallas office about the Clinic's citizen enforcement suit against Industrial Pipe, Inc under the Resource Conservation and Recovery Act (RCRA). The group's main focus is solid waste and challenging legislation in Texas that would weaken solid waste regulations.
- Co-hosted a conference and working meeting on February 4, 2006 with the Louisiana Environmental Action Network and other grassroots groups to discuss a "People's

Platform” for recovery of post-hurricane Louisiana and a special session of the Louisiana Legislature.

- Met with Sierra Club-Delta Chapter members to discuss their case involving a petition to the Corps of Engineers to prepare a supplemental environmental impact statement, including updated analyses of the impacts of management of water flows and oil and gas activities on Atchafalaya Basin resources.
- Met with the Treme Committee for Environmental Justice, the City of New Orleans, the U.S. Environmental Protection Agency, and the Federal Emergency Management Agency to explore the potential for federal funding of a study to investigate concerns about contamination in the historic Treme neighborhood and to educate federal officials about the Committee’s concerns.
- Attended the first meeting of the McKnight Foundation-funded “Mississippi River Collaborative” in St. Louis, Missouri from February 13-14, 2006. The Collaborative seeks to develop a coordinated scientific, legal and outreach strategy to address water quality issues in the Mississippi River watershed.
- Met with a group of Notre Dame University students participating in a seminar on environmental justice and human rights in Louisiana, particularly following Hurricane Katrina.
- Met with the Louisiana Environmental Action Network on March 17, 2006 to discuss the status of cases in which the Clinic is currently representing the group.
- Met with a group of St. Tammany Parish residents opposing a construction and debris landfill proposed for the Pearl River watershed. The group successfully prevented construction of the landfill in an ecologically sensitive and flood-prone area.
- Spoke at a conference at Thurgood Marshall School of Law on March 31, 2006, regarding post-Katrina waivers of environmental protections in New Orleans.
- Participated in the 11<sup>th</sup> Annual Tulane Environmental Law Conference held on April 1, 2006, in a panel discussion on the failure of New Orleans levees and who is liable for those failures.
- Participated in a public forum on April 2, 2006 hosted by the Louisiana Bucket Brigade and St. Bernard Citizens for Environmental Quality. Clinic Director Adam Babich spoke to residents of St. Bernard Parish about safeguarding their rights to



**Clinic Director Adam Babich at a press conference on the case against Chalmette Refining, LLC**

effective legal representation, especially as related to soil contamination in their communities.

- Attended an open house for Common Ground Relief, a grassroots organization providing a multitude of services to communities in New Orleans affected by Hurricane Katrina. Distributed *Citizen's Guide to Environmental Protection in Louisiana* and discussed common goals of Common Ground and the Clinic.
- Facilitated a meeting of Oakville community members on April 11, 2006 to discuss ongoing problems with the Industrial Pipe landfill with a local councilman and representatives of the Louisiana Department of Environmental Quality.



**Student Attorney Kate Miller with members of Concerned Citizens of St. Helena Parish, who won their case.**

- On April 19, 2006, met with a representative of the Sierra Club-Delta Chapter to discuss concerns with proposed and permitted landfills in post-Katrina New Orleans.
- Attended a meeting on April 21, 2006 with the LSU Hurricane Center and other organizations funded by the McKnight Foundation to learn about the Center's work on proposing environmentally sound plans for the reconstruction of New Orleans.
- Facilitated a second meeting of Oakville community members and representatives of the Louisiana Department of Environmental Quality regarding the Industrial Pipe landfill.
- On May 9, 2006, facilitated another meeting of Oakville community members. The meetings focus on new developments in the operation of the Industrial Pipe landfill and strategies to bring the facility into compliance with environmental laws.
- Attended the National Research Council's Committee on the Mississippi River and the Clean Water Act's open session, held on May 11, 2006. The Committee is funded by the McKnight Foundation to investigate how the Clean Water Act can be implemented and enforced to improve water quality in the Mississippi River.

- On May 25, 2006, met with clients opposing proposed dredging of the Inner Harbor Navigation Canal to discuss comments to the U.S. Army Corps of Engineers.
- Participated in a conference call with River Network and members of the Mississippi River Water Quality Collaborative to discuss antidegradation policies of states within the Mississippi River Basin. River Network and the Collaborative are interested in designing a “model” antidegradation policy that might serve as the basis for proposed improvements to existing state policies.
- Participated in the second meeting of the Mississippi River Water Quality Collaborative, held in St. Louis, Missouri from June 6-8, 2006. The meeting advanced the Collaborative’s strategic plans to address water quality issues in the Mississippi River watershed, and provided training to participants in commenting on Clean Water Act permits.
- On June 9, 2006, facilitated a meeting with clients--Louisiana Environmental Action Network and Gulf Restoration Network--and Deputy Secretary Karen Gautreaux and Louisiana Department of Environmental Quality staff to discuss ways to move toward a collaborative process for LDEQ’s Triennial Review of water quality standards and public involvement in the review process.
- On June 27, 2006, facilitated a fourth meeting of Oakville community members.
- Also on June 27, attended a meeting in Garyville, Louisiana with members of Save Our Neighborhoods and representatives of Marathon Oil. Save Our Neighborhoods is opposing the construction of a tank farm adjacent to a residential area.

---

## **FUNDING SOURCES**

---

The Clinic thanks the following organizations for their past and present support:

**The Belvedere Fund of the Rockefeller Family Fund**  
**The Belvue Fund of the Tides Foundation**  
**The Bellwether Fund of the Tides Foundation**  
**The Charles Stewart Mott Foundation**  
**Dallas Environmental Stewards**  
**The Deer Creek Foundation**  
**The Evan Frankel Foundation**  
**Drs. Jeff Gingerich and Pamela Nath, Bluffton College**  
**Henshaw Associates, Inc.**  
**The Lawrence Foundation**  
**The McKnight Foundation**  
**The Rockefeller Family Fund**  
**Tulane Law School**