

20th Anniversary



Annual Report 2008/9

Tulane Environmental Law Clinic

### Twenty Years and Counting!

Dear Colleagues:

August 24, 2009

In 1989, Tulane Law School began its Environmental Law Clinic primarily for educational reasons: to offer students the practical experience of representing actual clients in real environmental disputes. But the minute our students and staff attorneys accepted their first client, the focus changed. They became public-interest lawyers first, students and educators second. This is because lawyers and student attorneys are duty-bound to put their clients above their own interests and above the interests of their University, law school, clinic, and funders—a realignment of priorities with a profound educational and practical impact. So our mission statement emphasizes service as much as it does education. That mission is to 1) train effective and ethical lawyers by guiding students through actual client representation; 2) expand access to the legal system, especially for those who could not otherwise afford competent legal help on environmental issues; and 3) bolster the capacity of community members to participate effectively in decisions about environmental issues.

Our educational philosophy at TELC is straightforward. We believe that practicing public-interest law is the best way for our students to internalize the four key values at the core of the legal profession: 1) competence, 2) integrity, 3) loyalty to clients, and 4) respect for the rule of law. We operate, therefore, much like a law firm. Rather than assigning work to students according to a preconceived pedagogical framework, for example, we staff cases based on our clients' needs. Our experience is that most law students are capable of practicing on a high level, even in a complex field like environmental law.

Much of the guidance we provide is geared to helping students to communicate clearly and to put aside their preconceptions about how lawyers speak and write. We try to avoid the formalism and flourishes that sometimes bog down lawyerly presentations. If we present a complex (*i.e.*, confusing) case, a judge will tend to defer to government or industry lawyers, rather than to law students representing citizen groups or residents. So no matter how complicated a case looks to begin with, our students' primary task is to boil it down to something simple, compelling, and accurate.

On behalf of their clients, our students' work covers a wide range of environmental issues. They litigate (and negotiate) 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 government to perform statutory duties. Louisiana state courts and federal district courts in Louisiana have adopted "student practice" rules that allow TELC students to appear and argue in court.

We consider TELC's constituents to include everyone with an interest in Tulane University, environmental policy, or the rule of law, *i.e.* the entire Tulane University community (students, educators, alumni, and family), our client base, funders, colleagues, and members of the Louisiana bar, among others. With such a broad and diverse group, it is inevitable that all of our constituents will never agree with every position that the clinic's students and lawyers take on behalf of clients or with all our case selection or tactical decisions. But the clinic's underlying mission—training effective, ethical lawyers; expanding access to the system; and bolstering citizens' capacity to participate in decisions that affect their communities—is something all TELC's constituents can take pride in, since it advances goals that are fundamental to the legal profession and the U.S. system of justice.

### Funding

Tulane University's financial support of TELC usually covers about 60% of our operations. TELC raises additional funds to: 1) achieve a ratio of student-attorneys to staff

attorneys that allows us to train students within the context of non-routine and sometimes high profile cases, 2) supplement staff attorney salaries to attract and retain lawyers capable of guiding students through litigation of complex cases, 3) provide access to qualified expert witnesses and consultants, and 4) operate a community outreach program to manage relationships with constituents and help our client base make the best use of TELC as a resource.

To meet these goals, we rely on foundation grants, donations by individuals, families and corporations, and recoveries of attorney fees. Recently, we adopted the goal of using donations and fee recoveries to create a reserve equal to one year's budget. Our intent is to provide assurance to clients, students, and staff that occasional fund-raising shortfalls will not disrupt TELC's ability to function.

### **Media**

It is not TELC's goal to appear on TV or in the movies, but it is always a thrill. So far, these are our greatest hits:

- The 2009 documentary "Abode" features footage of student attorney Mary Nagle's November 8, 2007 oral argument before the Louisiana Public Service Commission in opposition to plans for a new coal-fired power plant (and the resulting emissions of CO<sub>2</sub>) in St. Charles Parish, Louisiana.
- PBS featured TELC's work on air pollution from an oil refinery in its July 15, 2005 episode of "Now" called "Formula for Disaster."
- The Lifetime Television drama "Taking Back Our Town" (broadcast on December 10, 2001) focuses on the Shintech case and features the work of TELC clinical instructor Lisa (Lavie) Jordan.
- Film producer and director Laura Dunn's 2000 documentary "Green" features TELC's work on the industrial corridor between Baton Rouge and New Orleans.
- The CBS series "60 Minutes II" covered the backlash against TELC's work on the Shintech case in its March 24, 2000 episode "Justice for Sale?," as did PBS's November 23, 1999 episode of "Frontline," also called "Justice for Sale."

### **Controversy**

TELC's work on behalf of clients can be controversial. This is not surprising since environmental disputes usually involve concerns about public health, economics, and the quality of life. Many of these disputes are driven by the disproportionate impacts that polluting facilities can have on lower-income and minority communities and also by disparities between the abilities of regulated companies and ordinary citizens to influence agency decision makers.

Tensions became especially pronounced in the late 1990s when TELC represented St. James Citizens for Jobs and the Environment, Louisiana Environmental Action Network (LEAN), and others in opposing Shintech, Inc.'s proposal for a polyvinyl chloride plant in a predominately African-American and lower income community in St. James Parish, Louisiana. In 1997, TELC and Greenpeace filed a petition for a formal EPA objection to the state's Clean Air Act permit for the plant, citing regulatory violations and environmental justice concerns. TELC also raised the environmental justice issues in a separate civil rights complaint filed with EPA. EPA responded with an order that objected to the permit under the Clean Air Act and noted that the environmental justice concerns "deserve serious attention" and that EPA

would investigate them. The next year, Shintech abandoned its plans for a St. James Parish facility and announced it would build a smaller plant elsewhere in Louisiana.

The American Bar Association honored TELC as co-recipient of its first "Award for Distinguished Achievement in Environmental Law and Policy" in 2000, largely due to the clinic's work on the Shintech case. TELC was also a runner up for the National Law Journal's Lawyer of the Year award in 1998. But the Shintech case also sparked a backlash. The governor asked Tulane's donors to withhold support for the University. Tulane's president responded that TELC's students "have done nothing wrong; they have made a fine contribution to our state."

After members of the business community asked the Louisiana Supreme Court to rein in TELC, the Court, in 1998, revised the rule that allows law students to make formal appearances on behalf of clients. The deans of Tulane and Loyola Law Schools, the American Association of Law Schools, and others objected to the changes and the Court softened some of them. Louisiana's Attorney General and State Bar Association, among others, asked the Court to stay or rethink the revisions. Law professors from across the country rallied with representatives of civil rights and environmental organizations in front of the Louisiana Supreme Court to protest the new rule. Finally, the Court further softened the revisions in March 1999. As subsequently interpreted by the courts, the 1999 revised rule does not limit TELC's ability to represent clients on controversial or high-impact cases.

Today, TELC tries to defuse and manage controversy by stressing the duty of all lawyers to expand access to the legal system and to see that justice is not rationed by ability to pay or denied to those whose views might be controversial. Under the Rules of Professional Conduct that govern Louisiana's legal profession, representing a client "does not constitute an endorsement of the client's political, economic, social or moral views or activities." Thus, former Tulane Law School Dean Lawrence Ponoroff explained to a local newspaper that, "The clinic is neither anti-business nor pro-business .... It is in the business of representing clients with legitimate claims under the law."

### Cases

Like any law office, TELC is defined by its work. Below are brief discussions of some of our most significant cases, with an emphasis on our most recent decade. More details about many of these cases are available on TELC's web page, which includes a collection of legal documents from several of the cases discussed below.\*

- **Toxics:** TELC settled a lawsuit this year about mercury—a neurotoxin—leaked from meters that measure pressure in natural gas pipelines in Union, Ouachita, and Morehouse parishes, Louisiana. After TELC filed the lawsuit, the defendant reached a voluntary cleanup agreement with the Louisiana Department of Environmental Quality (LDEQ), setting a cleanup standard of 2.3 parts per million (ppm). The settlement of TELC's clients' lawsuit reduces the average cleanup standard at each meter site to 1.5 ppm and to 1 ppm for sites located within 100 feet of a perennial stream or a tower designed to raise the elevation of a meter in a flood-prone area. In addition, following TELC legal action—combined with pressure from other fronts—the two chlor-alkali plants in Louisiana have converted from "mercury-cell" technology to a "membrane cell" technology that does not release mercury.

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\* [http://www.tulane.edu/~telc/html/Legal\\_Documents.html](http://www.tulane.edu/~telc/html/Legal_Documents.html).

□ **Water pollution:** In 2001, TELC filed a petition on behalf of a coalition of community groups asking EPA to withdraw Louisiana's authority to administer the Clean Water Act's discharge permitting program due to inadequate enforcement and other problems. EPA responded in early 2003 with a demand letter to Louisiana Governor Mike Foster, raising "serious concerns" about the state program and setting forth a list of "performance measures" and schedule for the state to restore "program integrity." In 2004, EPA found that LDEQ had completed the performance measures. TELC student attorneys continue to engage in citizen enforcement of Clean Water Act permits and appeals of LDEQ permits, especially for violation of the Act's anti-degradation requirements. In 2006, TELC obtained a federal court order enjoining a \$750 million U.S. Army Corps' project to expand New Orleans' Industrial Canal because the Corps had failed to consider environmental impacts from disposal of contaminated sediments in Mississippi River basin wetlands. TELC is proud to be part of the Mississippi River Collaborative, a team of nongovernmental organizations from states all along the river that the McKnight Foundation convened to use shared knowledge and resources to improve water quality in the Mississippi River basin.

□ **Air quality:** In 2005, a court found more than 2,600 Clean Air Act violations at an oil refinery in a citizen suit that TELC student-attorneys filed on behalf of a St. Bernard Parish community group. In another TELC-handled case the court vacated a permit in which LDEQ attempted to waive Clean Air Act requirements for prevention of deterioration of air quality. TELC-handled litigation has also resulted in admissions from LDEQ and EPA that Louisiana operated a "bank" for emissions trading that failed to meet federal requirements. In addition, TELC represented LEAN in obtaining court orders that 1) required EPA to make a determination to increase stringency of emission controls in the Baton Rouge area, 2) remanded an EPA attempt to extend Louisiana's deadline for achieving health protection standards for ozone air pollution in the Baton Rouge Area, and 3) vacated EPA's approval of an inter-pollutant trading plan that would have allowed Louisiana to increase emissions of volatile organic compounds in return for reductions in oxides of nitrogen. In addition, TELC worked with a coalition of public-interest law groups and state governments to defeat a 2004 EPA attempt to roll back Clean Air Act protections for residents in areas where air quality violates health protection standards for ozone pollution.

□ **Global warming:** On behalf of the Alliance for Affordable Energy, Sierra Club, LEAN, Gulf Restoration Network, and others, TELC has engaged in litigation to oppose construction of three new coal-fired power plants which, if built, would release pollutants associated with climate change. Construction of one of those plants is now suspended for at least three years and litigation and negotiations are ongoing about the others.

□ **Wetlands:** TELC student attorneys mounted a successful challenge to the U.S. Army Corps of Engineers' issuance of a permit to destroy wetlands in St. Tammany Parish, Louisiana, without considering cumulative impacts. The Fifth Circuit issued an opinion in that case effectively rejecting the Corps' general approach to analyzing mitigation and cumulative impacts when issuing such permits in southeastern Louisiana. Additionally, on behalf of a coalition of environmental groups, TELC appeared as *amicus* (i.e., as an interested non-party) in a case that rejected a U.S. Army Corps of Engineers' exemption from the Clean Water Act's permitting system for a cypress harvesting operation in wetlands

because the Corps failed to show that the tree harvesting operation falls within the Act's "on-going silviculture" exception.

□ **Landfills:** In a case that TELC handled on behalf of the Oakville Community Action Group, the court revoked a permit for expansion of the Industrial Pipe landfill, which looms over the predominately African-American community of Oakville in Plaquemines Parish, Louisiana. In another TELC-handled case, the court set aside a contract for St. Helena Parish to host a new landfill for 50 years because of violations of Louisiana's open meetings law. Also, after Hurricane Katrina and Hurricane Rita, LDEQ issued emergency orders to waive rules that normally prohibit disposal of most household wastes in landfills that lack protections against contamination of groundwater such as groundwater monitoring and leachate collection systems. On behalf of LEAN and Sierra Club, TELC brought a lawsuit in federal court, alleging that federal law preempted LDEQ's waivers. While the lawsuit was pending, TELC and LDEQ engaged in negotiations that resulted in several improvements to the emergency orders. Specifically, LDEQ 1) removed "household hazardous waste ... where segregation is not practicable" from the list of materials that the landfills could accept, 2) added language to the orders to require compliance with Clean Air Act standards for asbestos disposal, and 3) narrowed the orders' application to seven landfills. Ultimately, the court dismissed the plaintiffs' lawsuit, ruling that the plaintiffs lacked standing to sue.

□ **Wildlife:** In 1997, TELC obtained a court order barring use of a local "grass and weeds" ordinance to destroy a Baton Rouge Audubon Society project to restore habitat for migratory songbirds and butterflies in Cameron Parish. Also, TELC represented Sierra Club as *amicus* in an Endangered Species Act case in which the court issued a 2007 order requiring the U.S. Department of Interior to designate critical habitat for protection of the Louisiana Black Bear. In 2002, TELC negotiated a settlement on behalf of the Coalition for Louisiana Animal Advocates which required the U.S. Army to refrain from roundup and removal of wild horses from Fort Polk in the Kisatchie National Forest until completing an Environmental Impact Statement or Environmental Assessment.

□ **Environmental justice:** In 1997, EPA granted in part a TELC and Greenpeace petition for an objection to Shintech Inc.'s air quality permit for chemical plant in a predominately African-American and lower income community in St. James Parish that was already overburdened by sources of pollution. In 2004 TELC challenged FTM and Associates, Inc.'s practice of spraying sewage sludge on sugar cane fields near the homes of St. James Parish residents. Shortly after TELC issued a notice of intent to sue, FTM announced that it would stop the spraying. Also, TELC intervened on behalf of Citizens for a Strong New Orleans East and others in a lawsuit to support a cease and desist order that shut down the Chef Menteur landfill, located between a lower-income Vietnamese-American community in East New Orleans and Bayou Sauvage National Wildlife Refuge. TELC is involved in ongoing litigation to minimize the impacts of this unpermitted landfill on the neighboring community.

□ **Rule of law:** TELC's litigation on behalf of its clients includes cases to enforce the duty of Louisiana agencies, as public trustees under the Louisiana Constitution, to evaluate impacts, costs and benefits, alternatives, and mitigating measures before approving action affecting the environment. For example, in a 1995 TELC-handled case, Louisiana's First Circuit overturned a landfill permit because of LDEQ's failure to consider alternatives. Also, on behalf of Concerned

Citizens Around Murphy, TELC worked with Public Justice in 2008 to challenge EPA's planned experimental burn of asbestos contaminated waste in St. Bernard Parish that would have violated EPA's own hazardous air pollutant regulations. In response, EPA dropped its plans to burn regulated asbestos-containing material during the experiment. In 1996, Louisiana's First Circuit established in the TELC-handled *Rubicon* case that when LDEQ issues illegal permits, those permits are not merely subject to eventual administrative correction, but are "null and void and must be vacated."

TELC has an impact even broader than the cumulative effect of the cases and negotiations discussed above. This is because the mere availability of legal services empowers community members in their dialogues with regulators and industry. As the U.S. Court of Appeals for the Fourth Circuit has noted, "the comment of an ordinary citizen carries more weight if officials know that the citizen has the power to seek judicial review of any administrative decision harming him."

### Onward!

It was a major decision for Tulane University to create TELC twenty years ago to provide free legal services on environmental issues in a heavily industrialized and economically challenged state. Inevitably, the resulting expansion of Louisiana residents' ability to be heard on environmental issues will sometimes threaten projects important to powerful members of society. Yet the ethical principles that govern lawyers' professional duties rule out any expectation that TELC's lawyers will avoid representing clients on controversial cases.

In my nine years with Tulane, I have been proud to see the University and Law School live up to the tradition they began 20 years ago when they established TELC. That tradition is one of support for the clinic's mission to educate students and expand access to the legal system, even when that support is far from convenient. I am also continually inspired by the courage of TELC's clients, who make the difficult calls about how to protect their communities, such as when to negotiate, when to litigate, and when to settle. We give them the best advice we can, but it is our clients who must live with the results.

There is a passage in one of T.S. Eliot's "Four Quartets" that, as I understand it, instructs life's voyagers to embrace our journeys: to "fare forward" because we may never know the satisfaction of "arriv[ing] at any terminus." Those words can strike a chord with environmental educators and lawyers, since we are all unlikely to live long enough to see what long-term impacts our efforts may have. Will our students, or our students' students, help forge a sustainable relationship between industrial society and nature? Can our work—and that of clients, colleagues, and students—help buy communities enough time for lasting solutions to emerge and take hold? We may never know. But we take satisfaction from the journey: from teaching our students to help one client at a time, from the thrill of victory when we manage a step forward (even if we take a step back the next day) and from knowing that we, and our colleagues in public-interest law and environmental education, are making the effort.

Very truly yours,



Adam Babich, TELC Director

## OVERVIEW

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.

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."



For more information on the Clinic, see [www.tulane.edu/~telc/](http://www.tulane.edu/~telc/) or [http://en.wikipedia.org/wiki/Tulane\\_Environmental\\_Law\\_Clinic](http://en.wikipedia.org/wiki/Tulane_Environmental_Law_Clinic)

## 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 Maxine Lipeles

Professor Kirsten H. Engel

Michele Merkel, Esq.

Monique C. Harden, Esq.

Karla Raettig, Esq.

James M. Hecker, Esq.

Ronald Simon, Esq.

Professor Jane L. Johnson



## 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 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 2008 – 2009 academic year:

Alliance for Affordable Energy

Atchafalaya Basinkeeper

Bogue Lusa Water Works

Citizens Against Widening the Industrial Canal

Citizens for a Strong New Orleans East



Coalition to Restore Coastal Louisiana

Concerned Citizens Around Murphy

Concerned Citizens of Assumption Parish

Concerned Citizens of Independence

Environmental Defense Fund

Green Zone Task Force

Gulf Restoration Network

Holy Cross Neighborhood Association



Lake Pontchartrain Basin Foundation

Louisiana Audubon Council

League of Women Voters of New Orleans

Little Tchefuncte River Association

Louisiana Audubon Council

Louisiana Bayoukeeper

Louisiana Environmental Action Network



Lower Mississippi Riverkeeper

National Wildlife Federation



Oakville Community Action Group

Ouachita Riverkeeper

Orleans Audubon Society

Paincourtville Volunteer Fire Department

St. Bernard Citizens for Environmental Quality



Save Our Wetlands

Sierra Club

### **Adam Babich, Director**

Adam Babich is a professor of law 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.

### **Jill Witkowski, Deputy Director**

Jill Witkowski is a professor of the practice at Tulane Law School. She 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.

### **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.

### **Lisa Lavie Jordan, Staff Attorney**

Lisa Lavie Jordan, a New Orleans native, originally came to the Clinic in its early years as a student attorney from 1990-1991. She received her LL.M. in environmental law, with distinction, from Tulane in 1991. She went on to serve as a prosecutor in the Orleans Parish District Attorney's Office, where she eventually became a member of the office's Violent Offender Strike Force. In 1996, she returned to the Clinic, this time as a Supervising Attorney. Lisa left in 1998, but returned in July 1999 to serve as Acting Director of the Clinic for the 1999/2000 academic year. She has recently returned to the Clinic as a Supervising Attorney. Lisa retains an interest in trial education, having taught in Tulane's Trial Advocacy Program, as well as the NITA program, and having served as a coach for Tulane ATLA trial teams.

### **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.



### **Mike Murphy, Community Outreach Director**

Mike Murphy joined the Clinic in 2007 to handle community outreach as well as budget and grant duties for the Clinic. A New Orleans native with an undergraduate degree in electrical engineering from U.N.O., Mike worked as an electrical engineer in Los Angeles for 12 years. His involvement in southern California coastal issues led him to law school. Mike obtained his J.D. and a certificate in Environmental Law from Pace Law School in 2005. At Pace, he was president of the Environmental Law Society, interned at the EPA in Washington, D.C., and was a student attorney in the Pace Environmental Litigation Clinic.

### **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.



## STUDENT ATTORNEYS

Each year, the Clinic trains about 26 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.



### FALL '08 STUDENT ATTORNEYS

Galia Aharoni  
Erich Bailey  
Joshua Beldner  
Matthew Browne  
Lindsay Carr  
Dante Dipasquale  
Lynn Doiron  
George Driscoll  
Nelson Goodell  
Lucas Lavoy  
Kysang Lee  
Jordan Lesser



Max McCann  
Andrew Seidel  
Daniel Smith  
Lindsay Spann  
Timothy Stevens  
Jonathan Uhl  
Craig Watrous  
Lee Ziffer



### INTERNS

Kim Donnelly  
Jane Taylor



## STUDENT ATTORNEYS

### SPRING '09 STUDENT ATTORNEYS

Matthew Altaras  
Joshua Beldner  
Lara Benbenisty  
Shreya Biswas  
Ernesto Cerimele  
William Clark  
Jason Coe  
Dante Dipasquale  
Nelson Goodell  
John Gray  
Kyusang Lee  
Bryn Manning

Max McCann  
Kevin McDunn  
Matthew Miller  
Blake Mogabgab  
Richard Morgain  
Lindsey Topp  
Jaimie Tuchman  
Muriel Aurora Villegas  
Richard Vogt  
Trey Williams  
Kathryn Yancey  
Andrea Zeiter



### SUMMER RESEARCH ASSISTANTS

Matthew Altaras  
Matthew Miller  
Blake Mogabgab  
Muriel Villegas

### INTERNS

Emily Orler  
Nichole Saunders

## STUDENT ATTORNEYS



The first class of student attorneys (Spring 1989)



Fall 2008

To see each class photo from the past 20 years of the Clinic at our website please go to <http://www.tulane.edu/~telc> and click "Class Pictures" in the left-hand column.

## LEGAL WORK AND ACCOMPLISHMENTS

### CLEAN AIR INITIATIVE

On behalf of and in consultation with its clients, TELC manages the Clean Air Initiative to target dangerous air pollution in Louisiana from industrial facilities, including oil refineries and chemical and petrochemical manufacturing facilities, which are overwhelmingly concentrated in lower-income, minority communities. 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. Below is a sample of clean air matters the Clinic worked on during the 2008-09 academic year:



#### Lawsuits & Administrative Adjudications

*Louisiana Environmental Action Network v. Jackson*, No. 09-cv-01333 (D.D.C. July 17, 2009) (Seeking an injunction to require EPA and the Louisiana Department of Environmental Quality to implement Clean Air Act provisions to protect Louisiana residents from dangerous levels of ozone pollution in the five-parish Baton Rouge non-attainment area) (101-100)

*In re: Application Of Entergy Louisiana, LLC For Approval To Repower Little Gypsy*, No. U-30192 (La. Public Service Commission, July 27, 2007) (Phase II) (Intervention on behalf of a coalition of clients to convince the LPSC to disapprove Entergy's application to recover costs on construction work in progress on repowering its Montz, Louisiana facility to burn coal and petroleum coke, fuels associated with global warming) (126-016.2) **Dismissed (favorable result)** July 6, 2009

*Louisiana Environmental Quality Act v. Exxon Mobil Corporation*, No. 578304 (19th Jud. Dist., May 13, 2009) (Alleging that Exxon's Baton Rouge chemical plant discharges toxic air pollutants and other air contaminants without a permit to cover those discharges) (101-055)

*Sierra Club, Louisiana Environmental Action Network, Alliance for Affordable Energy, and Mr. O'Neil Couvillion v. Louisiana Department of Environmental Quality*, No. 576989 (19th Jud. Dist., Apr. 1, 2009) (Appealing LDEQ's modification of Entergy's Clean Air Act permit for the Little Gypsy power plant to allow release of hazardous air pollutants from burning higher sulfur coal and petroleum coke, fuels associated with global warming) (126-016.4)

*Sierra Club, Louisiana Environmental Action Network, Alliance for Affordable Energy, and Mr. O'Neil Couvillion v. Louisiana Department of Environmental Quality*, No. 574318 (19th Jud. Dist., Jan. 14, 2009) (Appealing LDEQ's modification of the Big Cajun II power plant's Clean Air Act permit to allow burning of higher sulfur coal, a fuel associated with health impacts and global warming) (126-018.1)

*Concerned Citizens Around Murphy v. Murphy Oil USA, Inc.*, No. 08-4986 (E.D. La. Nov. 21, 2008) (Seeking civil penalties and injunctive



relief for alleged violations of Clean Air Act permit emission limitations at a Meraux, Louisiana oil refinery) (161-003)

*Alliance for Affordable Energy v. Louisiana Public Service Commission*, No. 568378 (19th Jud. Dist., June 30, 2008) (Appealing the Commission's approval of Entergy Louisiana, LLC's plan to repower the Little Gypsy power plant, Unit 3, in Montz, Louisiana, to burn coal and petroleum coke, fuels that will increase emissions of global warming gases) (126-016.1)

*In re: Louisiana Department of Environmental Quality Air Permitting Decision Re: Louisiana Generating, LLC Big Cajun I Power Plant*, No. 564241 (19th Jud. Dist., March 19, 2008) (Appealing Clean Air Act permits allowing the Big Cajun I power plant to burn higher sulfur coal, a fuel associated with global warming) (126-014)

*Bogue Lusa Water Works v. Louisiana Department of Environmental Quality*, No. 474-677 (19th Jud. Dist., Nov. 20, 2000) (Seeking remand of LDEQ's approval of a Clean Air Act permit to construct a ground-water cooled merchant power plant in Bogalusa, 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 and the appeal is pending (125-001)

## **Comments, Notices, and Administrative Petitions**

*Comments on behalf of Concerned Citizens Around Murphy to the Louisiana Department of Environmental Quality* (Asserting that proposed modifications to Murphy Oil USA, Inc.'s Clean Air Act permit for an Oil Refinery in St. Bernard Parish will result in emission increases above thresholds for "Prevention of Significant Deterioration" and will therefore require additional controls to protect public health and welfare) (161-005) (Aug. 4, 2009)

*Notice of Intent to file lawsuit against the Environmental Protection Agency on behalf of the Louisiana Environmental Action Network, Concerned Citizens of Livingston Parish, O'Neil Couvillion and Harold Wayne Breaud* (Alleging that the EPA Administrator failed to timely respond to the petition to object to the air permit LDEQ issued to Woodside Landfill) (101-093.3) (May 1, 2009)

*Notice of Intent to file Louisiana Environmental Quality Act suit against Exxon Mobil Corporation d/b/a ExxonMobil Chemical Co. on behalf of Louisiana Environmental Action Network and Ms. Stephanie Anthony* (Alleging that ExxonMobile's Baton Rouge chemical plant discharges toxic air pollutants and other air contaminants without a permit to cover such discharges) (101-055) (April 6, 2009)

*Petition on behalf of Sierra Club Delta Chapter, Louisiana Environmental Action Network, and O'Neil Couvillion to the U.S. Environmental Protection Agency* (Seeking EPA's objection to a Title V Clean Air Act permit that the Louisiana Department of Environmental Quality issued to Consolidated Environmental Management, Inc. for the proposed Nucor Steel Facility in St. James Parish because of inadequate public notice, failure to conduct required air quality impact analyses, failure to consider impact of mercury emissions, fugitive emission sources and greenhouse gas emissions) (101-115.1) (Jan. 29, 2009)

*Comments on behalf of Sierra Club, Alliance for Affordable Energy, Louisiana Environmental Action Network, and Mr. O'Neil Couvillion to the Louisiana Department of Environmental Quality* (Opposing the proposed Part 70 Air Operating Permit for Louisiana Generating, LLC's

fuel conversion (natural gas to coal) at the Big Cajun I power plant in Point Coupee Parish because the proposed permit fails to meet maximum achievable control technology standards required by the Clean Air Act for the plant's hazardous air emissions) (126-014) (Jan. 7, 2009)



*Petition on behalf of Louisiana Environmental Action Network, Concerned Citizens of Livingston Parish, O'Neil Couvillion and Harold Wayne Breaud to the U.S. Environmental Protection Agency (Seeking EPA's objection to a preconstruction and Part 70 Air Operating Permit that the Louisiana Department of Environmental Quality issued to Waste Management of Louisiana, L.L.C. for a landfill in Livingston Parish) (101-093.3) (Jan. 2, 2009)*

*Notice of Intent to File Clean Air Act Citizen Suit Against Waste Management, LLC. on behalf of Louisiana Environmental Action Network and O'Neil Couvillion (Alleging Clean Air Act violations involving a Livingston Parish landfill operating without an air permit) (101-93.3) (Dec. 2, 2008)*

*Comments on behalf of Louisiana Environmental Action Network, Sierra Club, and O'Neill Couvillion to the Louisiana Department of Environmental Quality (Opposing the proposed Part 70 Air Operating Permit and Prevention of Significant Deterioration Permit for Consolidated Environmental Management, Inc.'s Nucor Steel Facility in Romeville, Louisiana) (101-115) (Nov. 24, 2008)*

*Petition on behalf of Sierra Club, Louisiana Environmental Action Network, Gulf Restoration Network, Alliance for Affordable Energy, and individual Sal Giardina, Jr. to the U.S. Environmental Protection Agency (Seeking EPA's objection to a revised Title V Clean Air Act permit that the Louisiana Department of Environmental Quality issued to Entergy Louisiana, LLC for a coal/petroleum coke repowering project at the Little Gypsy power plant in Montz, LA.) (126-016.5) (Nov. 21, 2008)*

*Comments on behalf of Louisiana Environmental Action Network Chapter to the Louisiana Department of Environmental Quality (Commenting on general conditions to air permits and suggesting that the agency add language reflecting its obligation to include monitoring sufficient to assure compliance with permit terms and conditions) (101-093.3) (Oct. 2, 2008)*

*Comments on behalf of the Sierra Club, Alliance for Affordable Energy, Gulf Restoration Network, Louisiana Environmental Action Network, and Sal Giardina, Jr. to the Louisiana Department of Environmental Quality (Objecting to the revised Title V air operating permit for Entergy Louisiana, LLC's Little Gypsy Power Plant because Entergy must obtain a determination from LDEQ that the permit includes maximum achievable control technology emission limits for each hazardous air pollutant the plant will emit) (126-016.4) (Sept. 25, 2008)*



## LEGAL WORK AND ACCOMPLISHMENTS

### 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 water protection programs, to abate harmful water discharges, and to empower citizens to participate effectively in permitting and enforcement processes. The Clinic worked on the following matters during the 2008–09 academic year:

#### Lawuits & Administrative Adjudications

*Louisiana Environmental Action Network, v. Louisiana Department of Environmental Quality*, No. 2009-CA-1244 (La. App. 1st Cir., July 8, 2009) (Appealing a 19th Judicial District Court's judgment affirming LDEQ's issuance of a water discharge quality permit for the Chef Menteur landfill, an unpermitted landfill located between a Vietnamese-American community in East New Orleans and Bayou Sauvage National Wildlife Refuge (101-111.2)

*Gulf Restoration Network, Louisiana Audubon Council, Louisiana Environmental Action Network, and Sierra Club v. EnerVest Operating, L.L.C.*, No. 07-817 (W.D. La., May 9, 2007) (Seeking cleanup of hazardous waste released from more than 600 sites of leaking mercury meters in Union, Ouachita, and Morehouse parishes) (101-092) **Settled** July 2, 2009

*In re: Louisiana Department of Environmental Quality Permitting Decision: Permit for Timber Branch Sewage Treatment Facility*, No. 577799 (19th Jud. Dist., April 28, 2009) (Appealing a Clean Water Act permit that allows Southeastern Louisiana Water and Sewer Company to discharge treated sewage into Timber Branch and the Tchefuncte River, which are Outstanding Natural Resource Waters) (110-006.2)



*Louisiana Environmental Action Network, State Of Louisiana, Save The Ouachita, and Kent Stegall v. Arkansas Pollution Control & Ecology Commission, City Of El Dorado Water Utilities, El Dorado Chemical Company, Lion Oil Company, and Great Lakes Chemical Company*, Nos. 0283-6 (consolidated) (Arkansas Court of Appeals, April 28, 2009) (Appealing aspects of an Arkansas Pollution Control & Ecology Commission order regarding a water quality permit for a joint pipeline for four industrial polluters to discharge into the Ouachita River in Arkansas, which flows into Louisiana) (101-105.3)

*Louisiana Environmental Action Network v. Louisiana Department of Environmental Quality*, No. 2009 CC 0314 (La. Sup. Ct., Feb. 9, 2009) (Opposing Waste Management's application for a Louisiana Supreme Court writ to prevent plaintiffs from challenging LDEQ's issuance of water quality certifications regarding waste disposal in the Chef Menteur landfill following Hurricane Katrina) (101-103.1) **Favorable Ruling** April 3, 2009



*Louisiana Environmental Action Network, State Of Louisiana, Save The Ouachita, and Kent Stegall v. Arkansas Pollution Control & Ecology Commission, City Of El Dorado Water Utilities, El Dorado Chemical Company, Lion Oil Company, and Great Lakes Chemical Company*, Nos. 2008-0296-6, 0283-6, & 0292-6 (consolidated) (Union County Cir. Court, Ark., July 28, 2008) (Appealing aspects of an Arkansas Pollution Control & Ecology Commission order regarding a water quality permit for a joint pipeline for four industrial polluters to discharge into

the Ouachita River in Arkansas) (101-105.2) **Adverse Judgment** March 31, 2009

*Louisiana Environmental Action Network, v. Louisiana Department of Environmental Quality*, No. 571,466 (19th Jud. Dist., Oct. 8, 2008) (Challenging LDEQ's issuance of a water discharge quality permit for the Chef Menteur landfill, an unpermitted landfill located between a Vietnamese-American community in East New Orleans and Bayou Sauvage National Wildlife Refuge) (101-111.1) **Adverse Judgment** March 25, 2009

*Concerned Citizens of Independence v. DoRan Seafood, LLC*, No. 09-cv-2833 (E.D. La., Feb. 19, 2009) (Alleging that DoRan Seafood discharges waste that passes through and interferes with a municipal sewage treatment plant in the Town of Independence, Tangipahoa Parish, Louisiana, causing violations of Clean Water Act standards for discharges into the Tangipahoa River) (162-001)



*Louisiana Environmental Action Network v. Louisiana Department of Environmental Quality*, No. 2008 CW 1970 (La. App. 1st Cir., Sept. 22, 2008) (Opposing a Waste Management writ application which argued that environmental plaintiffs have no right to challenge LDEQ's issuance of water quality certifications regarding waste disposal in the Chef Menteur landfill following Hurricane Katrina) (101-103.1) **Favorable Ruling** Jan. 9, 2009

*Holy Cross Neighborhood Association v. U.S. Army Corps of Engineers*, No. 08-30758 (5th Cir. Appeal Docketed 7/30/08) (U.S. Army Corps appeal of attorney fee award to the Clinic) (112-002.2) **Dismissed** August 27, 2008

*In re: Louisiana Department of Environmental Quality Permitting Decision: Guste Island Wetland Assimilation Project*, No.563932 (19 Jud. Dist., Feb. 8, 2008) (Challenging a LDEQ Clean Water Act permit, alleging excessive allowable discharges of nitrogen, ammonia, phosphorus, biochemical oxygen demanding-substances (BOD), and total suspended solids (TSS) into the Lower Tchefuncte River system) (157-014)

*In re: Louisiana Department of Environmental Quality Permitting Decision: Permit for Water Discharges from West Baton Rouge Westport Waste Water Facility (AI 43915), No. 558298 (19th Jud. Dist., Aug. 17, 2007) (Appealing permit renewal for publicly owned treatment works and alleging that the permit allows unlawful degradation of impaired waters and that LDEQ failed to respond to significant public comments) (157-010.1)*

*Pioneer Americas, No. 2007-1712-EQ, La. Division of Administrative Law (June 21, 2007) (Intervention on behalf of Louisiana Environmental Action Network and O'Neil Couvillion in an administrative hearing in which Pioneer Americas is challenging an LDEQ enforcement action regarding unlawful emissions of mercury) (101-110.1)*

*In re: Louisiana Department of Environmental Quality Permitting Decision: LPDES Permit to Vanguard SynFuels (AI 3133), No. 551,238, Section 26 (19th Jud. Dist., April 5, 2007) (Intervention on behalf of Louisiana Environmental Action Network and Mr. Howard Charrier for judicial review of water permit for discharge of wastewater into an Outstanding Natural Resource Water) (101-109)*

## **Comments, Notices, and Administrative Petitions**

*Comments on behalf of Gulf Restoration Network, Louisiana Environmental Action Network, Sierra Club—Delta Chapter, Coalition to Restore Coastal Louisiana, and Mr. O'Neil Couvillion to the Louisiana Department of Environmental Quality (Opposing Newport Environmental Services' proposed water quality certification that provides for its plan to fill in wetlands adjacent to Bayou Bienvenue and the Mississippi River Gulf Outlet to build an industrial park) (101-094.1) (Aug. 7, 2009)*

*Comments on behalf of Gulf Restoration Network, Louisiana Environmental Action Network and Mr. O'Neil Couvillion to the Louisiana Department of Environmental Quality (Opposing a proposed Clean Water Act general permit that provides for discharges from extraction, mining or dredging operations to essentially all state waters, including Outstanding Natural Resources Waters and impaired water bodies) (157-031) (July 23, 2009)*

*Notice of Intent to file Clean Water Act lawsuit against Sun Drilling Products Corp. on behalf of the Lower Mississippi Riverkeeper and the Louisiana Environmental Action Network (Alleging that Sun Drilling discharges Ethylbenzene and other pollutants to the Mississippi River in concentrations that exceed legal limits) (101-120) (July 23, 2009)*

*Comments on behalf of Little Tchefuncte River Association and Gulf Restoration Network to the Louisiana Department of Environmental Quality (Opposing a proposal to reissue to H2O Systems, Inc. a Clean Water Act discharge permit that has that has been ineffective in protecting two Outstanding Natural Resource Waters (the Tchefuncte River subsegment 040801 and Horse Branch Creek) in St. Tammany parish) (167-001) (July 16, 2009)*

*Request on behalf of Oakville Community Action Group, Louisiana Environmental Action Network, and Anne Higgins to the Louisiana Department of Environmental Quality (Asking LDEQ to investigate suspected Clean Water Act reporting violations at a landfill located in Plaquemines Parish) (104-022) (June 16, 2009)*

*Request on behalf of Ouachita Riverkeeper and Louisiana Environmental Action Network to the Arkansas Department of Environmental Quality (Asking ADEQ to restore designated uses*

to Coffee Creek and Mossy Lake pursuant to an EPA Use Attainability Analysis) (166-001) (June 4, 2009)

*Comments on behalf of Louisiana Environmental Action Network and Mr. O'Neil Couvillion to the Louisiana Department of Environmental Quality (Commenting on the proposed settlement between LDEQ and Pioneer Americas for Pioneer's mercury violations of its air permit) (101-110.1) (May 15, 2009)*

*Comments on behalf of the Holy Cross Neighborhood Association, Louisiana Environmental Action Network, and the Gulf Restoration Network to the U.S. Army Corps of Engineers (Commenting on the U.S. Army Corps of Engineers' Industrial Canal lock replacement project final supplemental environmental impact statement) (112-004) (May 4, 2009)*



*Comments on behalf of the Louisiana Environmental Action Network, Concerned Citizens of Livingston Parish, Gulf Restoration Network, O'Neil Couvillion and Harold Wayne Breaud to the Louisiana Department of Environmental Quality (Objecting to a water permit allowing Woodside Landfill, located in Walker, Louisiana, to discharge its waste water into an impaired waterbody) (101-093.5) (April 7, 2009)*

*Comments on behalf of Louisiana Environmental Action Network, Gulf Restoration Network, Sierra Club Delta Chapter, Louisiana Bayoukeeper, Atchafalaya Basinkeeper, Lower Mississippi Riverkeeper, and O'Neil Couvillion to the Louisiana Department of Environmental Quality (Opposing the Draft General Permit for Discharges from Oil & Gas Exploration, Development, and Production Facilities) (101-116) (March 9, 2009)*

*Comments on behalf of Louisiana Environmental Action Network, Sierra Club—Delta Chapter, and O'Neill Couvillion to the Louisiana Department of Environmental Quality (Opposing the proposed water quality certification for Consolidated Environmental Management, Inc.'s Nucor Steel Facility in Romeville, Louisiana) (101-115.2) (Feb. 17, 2009)*

*Comments on behalf of Louisiana Environmental Action Network, Sierra Club—Delta Chapter, and O'Neill Couvillion to the U.S. Army Corps of Engineers (Opposing the proposed Clean Water Act Section 404 permit to fill in wetlands in conjunction with Consolidated Environmental Management, Inc.'s Nucor Steel Facility in Romeville, Louisiana) (101-115.2) (Feb. 17, 2009)*

*Comments on behalf of the Holy Cross Neighborhood Association, Louisiana Environmental Action Network, and the Gulf Restoration Network to the U.S. Army Corps of Engineers (Commenting on Industrial Canal lock replacement project draft supplemental environmental impact statement) (112-04) (January 26, 2009)*

*Comments on behalf of the Louisiana Environmental Action Network, the Gulf Restoration Network, Louisiana Bayoukeeper, Atchafalaya Basinkeeper, Lower Mississippi Riverkeeper,*

*Sierra Club – Delta Chapter, and O’Neil Couvillion to the Louisiana Department of Environmental Quality* (Commenting on proposed rule change to allow onshore discharges of oil and gas exploration and production waste, including through Centralized Waste Treatment facilities) (101-114) (December 18, 2008)

*Comments on behalf of the Gulf Restoration Network to the Permit Board of the Mississippi Department of Environmental Quality* (Commenting on the proposed expansion of the Pearl River County Utility Authority, Poplarville Publicly Owned Treatment Works facility) (157-026) (December 16, 2008)

*Comments on behalf of the Gulf Restoration Network, Louisiana Bayoukeeper, Lower Mississippi Riverkeeper, Collin Thomas, and the Louisiana Environmental Action Network to the Louisiana Department of Environmental Quality* (Commenting on the proposed revision of dissolved oxygen water quality criteria for Terrebonne and Barataria Basins) (157-025) (Dec. 2, 2008)

*Comments on behalf of the Gulf Restoration Network to the Louisiana Department of Environmental Quality* (Commenting on the proposed 2008 Integrated Report on Water Quality in Louisiana under Clean Water Act § 303(d) and § 305(b)) (157-023) (Oct. 15, 2008)

*Comments on behalf of the Louisiana Audubon Council and the Sierra Club—Delta Chapter to the Louisiana Department of Environmental Quality* (Commenting on the proposed regulations implementing the Mercury Risk Reduction Act) (131-014) (Oct. 2, 2008)

*Comments on behalf of Louisiana Environmental Action Network and Gulf Restoration Network to the Louisiana Department of Environmental Quality* (Objecting to a draft water discharge permit for Valero Refining’s St. Charles Refinery seeking to discharge into the Mississippi River and an outstanding natural resource water) (157-018) (Aug. 7, 2008)



## LEGAL WORK AND ACCOMPLISHMENTS

### ENDANGERED WETLANDS INITIATIVE

Wetland loss in southern Louisiana has reached catastrophic proportions, threatening the productivity of ecosystems, the economic viability of its industries, and the safety of its residents. The Endangered Wetlands Initiative uses client-directed administrative comments and litigation to enhance citizen efforts to protect and restore wetlands and empower citizens to participate effectively in wetlands decisions. On behalf of its clients, the Clinic worked on the following matters within its Endangered Wetlands Initiative during the 2008-09 academic year:



#### Law suits & Administrative Adjudications

*Louisiana Environmental Action Network and Mr. O'Neil Couvillion v. Tommy Martinez*, No. 93387B (23rd Jud. Dist., July 31, 2009) (Alleging that the Ascension Parish President drained Alligator Bayou and Spanish Lake without legal authority) (101-118)

*Oakville Community Action Group v. Plaquemines Parish Council*, No. 2009-C-621 (La. Sup. Ct., May 1, 2009) (Opposing Plaquemines Parish Council's application for a Louisiana Supreme Court writ to review an appellate court's revocation of a coastal use permit for expansion of the Industrial Pipe landfill into coastal wetlands) (104-014.1) **Favorable Ruling** May 1, 2009

*Oakville Community Action Group v. Plaquemines Parish Council*, No 2008-CA-1286 (La. App. 4th Cir., Sept. 9, 2008) (Appealing the 25th Judicial District Court's denial of the Oakville Community Action Group's petition for review of a Plaquemines Parish coastal use permit for the Industrial Pipe landfill) (104-014) **Favorable Ruling** Feb. 18, 2009 (7 So.3d 25)

*Save Our Wetlands v. Terrebonne Levee and Conservation District*, No, 08-2159 (E.D. La., April 29, 2008) (Citizen suit against a levee district for failure to obtain a Clean Water Act Section 404 permit before filling wetlands to build Reach J1 of the Morganza-to-the-Gulf Levee Project) (163-001) **Settled** Feb. 11, 2009

*Atchafalaya Basinkeeper and Louisiana Environmental Action Network v. David Fruge, in his official capacity as Interim Director of the Atchafalaya Basin Program, and Sandra Thompson-Decoteau*, No, 6:08-1155 (W.D. La., Aug. 8, 2008) (Citizen suit against the Atchafalaya Basin Program for failure to comply with a Clean Water Act Section 404 permit when dredging Bayou Postillion) (155-003)

*Oakville Community Action Group v. Plaquemines Parish Council*, No. 50-697 (25<sup>th</sup> Jud. Dist., Dec. 15, 2003) (Challenging a decision by the Plaquemines Parish Council to approve Industrial Pipe, Inc.'s coastal use permit application) (104-011) **Adverse Judgment** July 31, 2008 (reversed on appeal)



*Gulf Restoration Network v. Hancock County Development, LLC and Joshua Ladner*, No. 1:08-cv-00186-LG-RHW (S.D. Miss., May 8, 2008) (Citizen suit against developers for failure to obtain a Clean Water Act Section 404 permit before filling wetlands for planned development on 700 acres near Stennis, Mississippi) (157-019)

## **Comments, Notices, and Administrative Petitions**

*Comments on behalf of Gulf Restoration Network, Louisiana Environmental Action Network, Sierra Club—Delta Chapter, Coalition to Restore Coastal Louisiana, Environmental Defense Fund, National Wildlife Federation and Mr. O’Neil Couvillion to the Army Corps of Engineers* (Opposing Newport Environmental Services’ proposed Clean Water Act § 404 permit to fill in wetlands adjacent to Bayou Bienvenue and the Mississippi River Gulf Outlet to build an industrial park) (101-094.1) (Aug. 7, 2009)

*Request on behalf of Louisiana Environmental Action Network to the U.S. Army Corps of Engineers* (Asking the Corps to initiate a formal notice and comment period for a Corps rule setting standards for mitigation banks) (101-118) (June 11, 2009)

*Request on behalf of Louisiana Environmental Action Network, Gulf Restoration Network, Sierra Club—Delta Chapter and the Lake Pontchartrain Basin Foundation to the Louisiana Department of Environmental Quality* (Asking LDEQ to deny Newport Environmental Services L.L.C.’s application for a landfill in wetlands in New Orleans because Newport failed to provide geological information that LDEQ requested) (101-094) (June 3, 2009)

*Comments on behalf of Louisiana Environmental Action Network, Sierra Club—Delta Chapter, and O’Neill Couvillion to the Louisiana Department of Natural Resources* (Opposing the proposed coastal use permit for Consolidated Environmental Management, Inc.’s Nucor Steel Facility in Romeville, Louisiana) (101-115.2) (Feb. 18, 2009)



## LEGAL WORK AND ACCOMPLISHMENTS

### COMMUNITY PRESERVATION INITIATIVE

The Community Preservation Initiative helps Louisiana residents defend their communities and environment against damage from land use decisions that threaten the historic value, cultural fabric, and environmental integrity of communities. On behalf of citizens and community organizations, the Clinic represented communities in the following matters during the 2008–09 academic year:



#### **Lawsuits & Administrative Adjudications**

*Louisiana Environmental Action Network, v. Louisiana Department of Environmental Quality*, No. 560,711 (19th Jud. Dist., July 28, 2008) (Challenging LDEQ water quality certifications regarding waste disposal in the Chef Menteur landfill, an unpermitted landfill—located between a Vietnamese-American community in East New Orleans and Bayou Sauvage National Wildlife Refuge—that received storm debris following Hurricane Katrina) (101-103) **Adverse Judgment** July 29, 2009

*Concerned Citizens of Assumption Parish, Paincourtville Volunteer Fire Department, Louisiana Environmental Action Network, Andrea Williams, and O’Neil Couvillion v. Louisiana Department of Environmental Quality* (19th Jud. Dist. No. 569,424, Aug. 4, 2008) (Challenging LDEQ’s issuance of solid waste permit to Belle Company to construct and operate a landfill in Assumption Parish) (111-004.2) **Adverse Judgment** May 20, 2009

*Oakville Community Action Group, Louisiana Environmental Action Network, and Anne Higgins v. Louisiana Department of Environmental Quality* No. 573974 (19th Jud. Dist., Jan. 5, 2009) (Challenging LDEQ's decision to allow the Industrial Pipe landfill to accept waste directly from barges in a manner that, LDEQ has found, poses contamination risks to area soils and the Hero Canal) (104-020) **Adverse Ruling** May 18, 2009



*In re: Louisiana Department of Environmental Quality Permitting Decision: Air Permit for Waste Management of Louisiana, L.L.C.'s Woodside Landfill*, No. 574282 (19th Jud. Dist., Jan. 13, 2009) (Challenging LDEQ's issuance of a Clean Air Act permit that petitioners Louisiana Environmental Action Network, Concerned Citizens of Livingston Parish, Mr. Harold Wayne Breaud and Mr. O'Neil Couvillion allege violates provisions of the Clean Air Act and Louisiana air regulations) (101-093.4)

*Louisiana Environmental Action Network v. Louisiana Department of Environmental Quality*, Nos. 2008-CC-2461, 2462 (La. Sup. Ct., July 7, 2008) (Opposing a Waste Management writ application that challenged a Louisiana First Circuit Court of Appeal's decision declining to review a trial court order transferring, rather than dismissing, an appeal of LDEQ's approval of a plan to leave waste in place at the Chef Menteur landfill without adequate monitoring) (101-111) **Favorable Ruling** Jan. 9, 2009

*Louisiana Environmental Action Network v. Louisiana Department of Environmental Quality*, No. 2008 CW 1116 & 1438 (La. App. 1st Cir., June 9 & July 16, 2008) (Writ applications by intervener Waste Management regarding the 19th Judicial District Court's decision to transfer, rather than dismiss, the Plaintiffs' challenge to LDEQ's approval of a plan to "close" Chef Menteur landfill by leaving waste in place without adequate monitoring) (101-111) **Favorable Rulings** Sept. 12, 2008

*Louisiana Environmental Action Network, Citizens for a Strong New Orleans East, and the Green Zone Task Force v. Louisiana Department of Environmental Quality*, No. 559,256 (19th Jud. Dist., Sept. 14, 2007) (Appeal of LDEQ decision approving Waste Management's plan to "close" the unpermitted Chef Menteur landfill—located between a Vietnamese-American community in East New Orleans and Bayou Sauvage National Wildlife Refuge—by leaving waste in place without adequate monitoring) (101-111)

*Louisiana Environmental Action Network v. Louisiana Department of Environmental Quality*, No. 543,232 (19th Jud. Dist., July 31, 2006; intervention filed Oct. 12, 2006) (A consolidation of two cases: one (No. 545,758) filed by Waste Management against LDEQ (to prevent the agency from withdrawing its emergency authorization for the Chef Menteur landfill, and one (No. 543,232) filed by Louisiana Environmental Action Network and Citizens for a Strong New Orleans East against LDEQ to challenge LDEQ's authority to issue an emergency authorization for the landfill to operate without a permit) (101-096)

## **Comments, Notices, and Administrative Petitions**

*Request on behalf of Oakville Community Action Group, Louisiana Environmental Action Network, and Anne Higgins to the Louisiana Department of Environmental Quality (Asking LDEQ to investigate and require removal of waste dumped near and into a navigable waterway at a scrap metal facility located in Plaquemines Parish) (104-022) (June 16, 2009)*

*Request on behalf of Oakville Community Action Group, Louisiana Environmental Action Network, and Anne Higgins to the Louisiana Department of Environmental Quality (Asking LDEQ to investigate and require removal of a pile of creosote-treated lumber next to a navigable waterway at a solid waste facility located in Plaquemines Parish) (104-022) (June 6, 2009)*

*Comments on behalf of Oakville Community Action Group to the U.S. Army Corps of Engineers (Supporting a proposed levee project that would provide enhanced hurricane and storm damage risk reduction to Oakville and other communities in Plaquemines Parish) (104-019) (May 19, 2009)*

*Comments on behalf of Oakville Community Action Group, Louisiana Environmental Action Network, and Anne Higgins to Louisiana Department of Environmental Quality (Alleging that draft modifications to a solid waste permit for Industrial Pipe, Inc.'s landfill in Oakville, Louisiana would violate state solid waste regulations) (104-020) (Aug. 18, 2008)*



- August 6, 2009 – Attended an event to acknowledge the efforts of the summer interns for the Louisiana Bucket Brigade.
- August 3, 2009 – Attended an organizational meeting of Repower Louisiana.
- July 30, 2009 – Supported clients by attending the Louisiana Coastal Protection and Restoration Authority and the Governor's Office of Coastal Activities meeting that sought "input on ways to reform the Army Corps of Engineers and make coastal restoration and protection efforts more efficient."
- July 30, 2009 – Attended "grand closing" of the Rebuilding Information Station, a collaborative effort of UNO-Center for Hazards Assessment, Response and Technology, the LSU AgCenter, Tulane City Center and, the Road Home Program.
- July 21, 2009 – Attended the opening of the local office of Repower America.
- July 13 & 14, 2009 – Attended a meeting sponsored by the Deep South Center for Environmental Justice to train the New Orleans East community regarding plasma gasification technology proposed by a company intending to site a trash-to-energy plant in their neighborhood followed the next evening by a meeting of the Eastern New Orleans Neighborhood Advisory Commission regarding their discussion and vote on the proposed trash-to-energy plant in their neighborhood.
- July 9, 2009 – Attended an environmental justice listening session hosted by the City of New Orleans Office of Environmental Affairs and EPA Region 6. Residents and environmental groups from around Southeast Louisiana stated their issues, priorities, and frustrations with respect to environmental pollution as well as their perceived lack of response by government regulators.
- June 25, 2009 – Met with undergraduate and law school student interns of the Louisiana Bucket Brigade to discuss environmental law and environmental justice issues with clinic attorneys.
- June 2, 2009 – Participated in a panel evaluating candidates for awards in LDEQ's Environmental Leadership Program.
- May 26, 2009 – Supported clients by attending the Environmental Voter Day event in Baton Rouge, LA.
- May 18, 2009 – Met with South Korean delegates as part of the Department of State's International Visitor Leadership Program. Ms. Hyesil Jung (Representative, Multi-culture Family Association), Mr. Sung Ryong Kang (Executive Director, Future Foundation), and Ms. You Jean Roh (Senior Researcher, Joong-ang Ilbo Institute for Civic Society) learned about the Tulane Environmental Law Clinic's role with respect to interactions among non-governmental organizations, citizen activists, and the federal and state governments involved with environmental issues.
- May 8, 2009 – Deputy Director Jill Witkowski co-presented a panel with Robert Wiygul entitled "Citizen Enforcement of the Clean Water Act: taking the law into your own hands" at the Gulf Restoration Network's Gulf Gathering.
- April 24, 2009 – Met with A Cloud of Witnesses for Change in the Gerttown community regarding their revitalization campaign to relocate heavy industry from the neighborhood.
- April 22, 2009 – Community Outreach Director Mike Murphy delivered a presentation as part of the University of New Orleans Geography Department's "Environmental & Place" series entitled "Environmental Justice Needs in Louisiana: Petroleum Tank Farm (Garyville) & Landfill (Oakville) Case Studies."
- April 20, 2009 – Community Outreach Director Mike Murphy delivered a presentation to the civic group Tammany Together on the topic of Louisiana citizens' environmental rights and how to protect those rights by accessing needed information and leveraging available resources.

- April 4-5, 2009 – Attended the 14<sup>th</sup> Annual Tulane Environmental Law and Policy Summit’s panel presentations on various topics germane to our clients and partners. The conference brings together a diverse group of stakeholders from academia, the local community, NGOs, government agencies, industry, and others to discuss current environmental topics.
- April 1, 2009 – Met with residents of Pine Hills subdivision in Hammond to assist with their struggle to clean up their drinking water, which has had discoloration and odor for three years.



- March 20, 2009 – Deputy Director Jill Witkowski co-presented “Practice & Procedure in the Division of Administrative Law” at the Louisiana State Bar Association’s Environmental Law Section’s annual seminar.
- March 19, 2009 – Facilitated a meeting between Dr. Matthew Harwell with clients and partners. This discussion involved experiences in large eco-system restoration projects of the Comprehensive Everglades Restoration Plan and how lessons learned from that plan may apply to Louisiana’s coastal restoration projects.
- March 16, 2009 – Attended an event hosted by the Holy Cross Neighborhood Association at which environmental justice advocate Majora Carter shared her experiences using green jobs and environmental restoration to combat blight and crime in her Bronx neighborhood.
- March 15, 2009 – Attended the premier of the documentary “Abode” that features scenes of a Clinic student presenting oral arguments before the Louisiana Public Service Commission advocating on behalf of clients against Entergy’s proposed conversion of the power plant Little Gypsy from relatively clean burning natural gas to coal and petroleum coke fuels.
- March 13, 2009 – Met with the Alliance for Affordable Energy to discuss collaborating on drafting Beneficial Environmental Program as well as Supplemental Environmental Program proposals.
- February 5 & June 10, 2009 – Participated in a site visit of the Hammond wastewater assimilation project with clients (Gulf Restoration Network, Louisiana Audubon Council, and Louisiana Wildlife Federation). The site is a pilot project for using treated sewage to rehabilitate wetlands. However, our clients have several design concerns regarding its effectiveness and the policy implications if it is not implemented properly.
- January 23, 2009 – Supported clients by meeting with St. Tammany Parish officials to discuss long-term sewage treatment planning for existing as well as new residential developments.



- January 21, 2009 – Attended panel presented by Global Green titled "Louisiana's Role in Reducing Green House Gas Emissions."
- January 21, 2009 – Supported community members by attending the Vieux Carre Property Owners, Residents and Associates panel discussion regarding their concerns over the LSU/VA hospital proposal that would demolish over 200 historic buildings in 70 acres of the historic lower Mid-City neighborhood.
- January 6, 2009 – Met with a group of students from Cardozo and Brooklyn Law Schools to discuss environmental law and environmental justice in Louisiana, the situation in New Orleans post-Katrina, and the Clinic's cases related to these issues.
- January 6, 2009 – Met with Louisiana Bucket Brigade to discuss projects and community status.
- December 17, 2008 – Supported clients by attending Louisiana Environmental Action Network's holiday celebration.
- December 4, 2008 – Supported client by attending Louisiana Bucket Brigade's membership drive and celebration.
- December 2, 2008 – Performed outreach at Tulane Center for Public Service Showcase highlighting work done by undergraduate interns and networked with other public interest organizations, which included client groups.
- December 2, 2008 – Donated copies of *Citizen's Guide to Environmental Protection* to the Alliance for Affordable Energy for employee orientation.
- November 26, 2008 – Supported clients by attending a going-away event for Sierra Club chapter leader.
- November 14, 2008 – Staffed an information table at the Going Green Block Party event on the Tulane campus.
- November 13, 2008 – Met with LDEQ's Community & Industry Relations manager and the leader of the Alliance for Affordable Energy's BuildSmart Learning Center to discuss future EnviroSchool classes.
- November 8, 2008 – Staffed an information table at the Longue Vue Gardens' "It IS Easy Being Green" event.
- October, 2008 – Free Speech Radio News aired an interview with Clinic attorney Liza Calderon regarding legal solutions to water quality in the Mississippi River and the associated problem of the "dead zone" in the Gulf of Mexico.
- October 30, 2008 – Supported client by attending the Alliance for Affordable Energy's grand opening of the BuildSmart Learning Center.
- October 28, 2008 – Supported community members in towns of Lemnville and Welcome by speaking at a town hall meeting regarding a proposed petroleum tank farm.
- October 18, 2008 – Supported clients by attending the Louisiana Environmental Action Network's annual People's Conference held in Baton Rouge. The conference brings together community leaders, scientists, and others to discuss the numerous environmental challenges facing the state.
- October 8, 2008 – Supported clients, Concerned Citizens Around Murphy, at a meeting with St. Bernard Parish Council members, Murphy Oil representatives, and citizens to consider use of the Murphy Refinery oil spill buyout area as a buffer zone.



- October 2008 through May 2009 — Supported clients at quarterly meetings between the Army Corps and environmental NGOs to review the suitability of the alternative arrangements to NEPA, which were formed to manage the post-Katrina hurricane protection projects.

- October 6, 2008 — Supported clients, Oakville Community Action Group, at a briefing of the Army Corps regarding the results of preliminary archeological investigation into historical artifacts in the community.

- October 4, 2008 — Hosted a tour for nearly 40 college students of the industrial corridor between New Orleans and Baton Rouge highlighting the history of the region and the environmental conflicts that shaped present conditions in the region.



- September 22, 2008 — Supported clients by attending briefing on 30,000-acre wetlands assimilation project proposed by New Orleans and St. Bernard Parish.

- September 19, 2008 — Participated in the initial meeting of the City of New Orleans Lead Watch Program. The program seeks to coordinate activities to educate, enforce, and remediate the lead problem impacting children and renovation workers in New Orleans.

- September 10-11, 2008 — Participated in the McKnight Foundation-funded Mississippi Water Quality Collaborative held in Madison, WI. The Collaborative seeks to improve water quality in the Mississippi River watershed through a combination of legal actions, policy changes, public outreach, and education.

- August 21, 2008 — Supported clients by attending Army Corps NEPA meeting regarding the levee alignment impacting a nationally significant wetland protected by the EPA as well as a levee alignment that concerns the Oakville community.

- August 20, 2008 — Met with members of the Welcome and Lemannville communities regarding community preservation in light of a proposed petroleum tank farm.

- August 2008 through August 2009 — Attended (and encouraged others to attend) the LDEQ EnviroSchool for Communities—a series of training sessions designed to educate communities and encourage meaningful participation in the regulatory process. The goal is for communities to become informed participants and skilled on how to access and utilize informational resources for effective communication and dialogue with stakeholders.



- August 11 & 12, 2008 — Supported Lower Mid-City Residents and Businesses at a scoping meeting for the proposed VA hospital regarding an alternative site that would avoid the destruction of nearly 200 homes in a historic district and attended a Historic Preservation Act stakeholders meeting regarding potential mitigation if the project would destroy nearly 200 homes in a historic district.

- August 4, 2008 — Assisted Bayou Rebirth, a wetlands education and restoration group, obtain non-profit status.

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