

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy
January 21, 2022

The Fellowship of Environmental Justice

It looks like EPA is going to have a busy year. With nary enough time to have second breakfast, the agency was [sued](#) today (what else is new?) by the National PFAS Contamination Coalition, Sierra Club, and Union of Concerned Scientists about its handling of PFAS reporting. At the center of the lawsuit is a rule promulgated under the Trump administration that exempts reporting of mixtures that contain less than 1% of PFAS, which, the complaint argues, leads to underreporting and an inaccurate understanding of PFAS releases. Because the rule is from the previous administration, it's likely that EPA, rather than fighting the lawsuit, will opt to engage in the rulemaking process to remove the current exemption. This is especially likely, as we've seen a major priority of this administration is to undo rules from the previous one.

Back home in Louisiana, the Concerned Citizens of St. John and the Sierra Club filed [a complaint](#) with EPA requesting that the federal agency investigate and oversee Louisiana's permitting process. It alleges that the Louisiana Department of Environmental Quality and Department of Health have subjected residents of St. John the Baptist to disproportionate pollution from facilities emitting ethylene oxide and chloroprene. They argue that the citizens have a civil right to be equally protected from environmental harm. EPA doesn't usually get involved in civil rights matters, but President Biden and Administrator Regan have [expressed intent to advance environmental justice](#). [Visits are one thing](#), but it's another entirely to make lasting change. [One does not simply cure environmental injustice](#).

The Two Jurisdictions

You may [vaguely recall](#) a number of Louisiana lawsuits brought by coastal parishes against oil and gas companies for the damage their activities allegedly did to the state's coastline. The lawsuits have bounced back and forth [between state and federal court](#). In the most recent development, the U.S. District Court [granted](#) a renewed motion to remand the Plaquemines Parish lawsuit back to state court. Making it clear that he was not deciding on the merits, [Judge Feldman held that the defendants failed to meet the criteria that would allow the case to be tried in federal court](#). Specifically, the Judge found that they did not show that they were "acting under" the direction of a federal officer. Still, this fight is far from over. You can bet your Baggins that the oil and gas companies will appeal this decision and there will be a few more rounds of arguing over jurisdiction before they even get to the merits of the case. But this is just one case in a slew of many and they're not all consolidated, so there's sure to be multiple different

The **Tulane Institute on Water Resources Law and Policy** is a program of the Tulane University Law School.

The Institute is dedicated to fostering a greater appreciation and understanding of the vital role that water plays in our society and of the importance of the legal and policy framework that shapes the uses and legal stewardship of water.

Coming up:

[National Flood Insurance Program's Minimum Floodplain Management Standards Comments Due](#), January 27

[WOTUS Rule Comments Due](#), February 7

[UF Water Institute Symposium](#), February 22-23

[Tulane Environmental Law Summit](#), March 11-12

[Coastal Law in Louisiana \(CLE\)](#), April 21- 22

Water jobs:

[Assistant General Counsel & Policy Researcher](#); The Water Institute of the Gulf; Baton Rouge, LA

Louisiana Bucket Brigade; [Campaign Director](#), New Orleans, LA; [Economic Development Manager](#), River Parishes, LA;

[Sustainability/ESG Director](#); PwC; multiple locations

[Research Associate](#); University of New Orleans; New Orleans, LA

[Communications Specialist](#); Environmental Defense Fund; Multiple

[Research Associate 1](#); University of Louisiana Lafayette; Lafayette, LA

[Organizing Representative](#); Sierra Club; New Orleans, LA

[Staff Attorney](#); Save Our Springs Alliance; Austin, TX

[Attorney](#); State Water Resources Control Board; Sacramento, CA

[Request of Interest](#); Restore Mississippi River Delta; deadline: Feb. 14

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rulings on the issue of whether these companies are liable for the [damage done to natural resources](#) allegedly resulting from their operations.

It's a long and difficult journey, but Plaquemines and the other parishes can find comfort in knowing that they are not alone. The City of Baltimore has a hearing on January 25 in which the 4th Circuit Court of Appeals will decide whether [Baltimore's lawsuit against BP](#) belongs in federal or state court. The number of [states suing oil and gas companies](#) to hold them accountable [continue to increase](#), and there's no question that we're on the precipice of a major decision. One small but tasty perk, though, of this new, warmer globe is the [early arrival of crawfish season](#).

The Return of the Levees

Coastal restoration and flood protection seem to be getting some attention from Congress as Louisiana, AKA modern-day [Minas Tirith](#), is set to receive over \$2.7 billion from the Infrastructure Act and Hurricane Ida Supplemental Relief Bill. That funding has long been a priority of Louisiana. And that's no surprise; there is no question that the levees did their job during Ida. But the goalposts keep moving and while some [extra protection](#) was [built into our systems](#), climate change is certain to increase risks ([and costs](#)). The Army Corps of Engineers will be allocating over [\\$643 million of the Infrastructure Act](#) to Louisiana for coastal, waterway, and flood projects. Of that, \$378.5 million will be used to construct the [Morganza-to-the-Gulf Hurricane Protection System](#), a levee system designed to protect Terrebonne and Lafourche Parishes and address coastal erosion. The project was authorized in 2014, though planning for the system started in 1992. There hadn't been any federal funding until recently and costs were covered by the non-Federal sponsor using state and local funds. The money from the Infrastructure Act is in addition to the [\\$500 million](#) from a spending bill passed last year. The Morganza-to-the-Gulf is [not the only levee project that got an injection of money](#). The West Shore Lake Pontchartrain Levee received an additional \$453 million from the Hurricane Ida Supplemental Relief Bill. This is the biggest news since [Amazon announced the title for its new Lord of the Rings series](#). With all these walls we're building, surely that'll keep us [safe from harm](#), right? *Nervous laughter* [Right?](#)