

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy
November 12, 2013

Senator Vitter Criticizes EPA's Approach to Dead Zone Remedy

Under the Clean Water Act, the EPA must limit pollutants from entering "impaired" waters. Although hardly anyone would [argue](#) that the Gulf of Mexico Dead Zone is an impaired section of water, Senator Vitter and the Louisiana Department of Environmental Quality (LDEQ) feel the EPA's mandatory control measure, a Total Maximum Daily Load (TMDL), to be "heavy-handed" and "unwise." In addition to other efforts working with corn-belt states and the USDA, the EPA has named three Louisiana coastal subsegments of the Gulf of Mexico as impaired, so a TMDL is statutorily mandated. LDEQ points out that most of the pollutants causing the Dead Zone don't come from Louisiana. We'd point out that an impaired water finding and a TMDL for these sections of the Gulf are the ammunition Louisiana's state government would need to head upstream and get cooperation with other Mississippi River Basin states, but that's probably why we're not in Louisiana's state government.

Senator Vitter also [took EPA to task](#) for attempting to require farmers owning concentrated animal feeding operations (CAFOs) to obtaining stormwater discharge permits. A federal district court judge in West Virginia agrees with Sen. Vitter's line of thinking and ruled that a poultry farmer's CAFO fell under the agricultural stormwater discharge exemption. On the other hand, leaders in Iowa are trying to [reconcile](#) the need to control agricultural pollutants with their reticence to impose mandatory standards.

Jefferson and Plaquemines Parish Councils May Sue Oil & Gas Industries

In what must be bittersweet news for the Southeast Louisiana Flood Protection Authority East, it seems as though the two coastal parishes are following the flood authority's lead and [readying suits](#) against the oil and gas industry for damages to the parishes. The suits have yet to be filed, nor have we seen them, but so far these suits are not bringing the ire of the Jindal administration the way the flood authority suit did. CPRA Chairman Garret Graves notes that these are filed by elected officials, not appointed officials, and the lawyers were not working on contingency fees. So perhaps Mr. Graves is not against suing the oil & gas industry, as long as greedy trial lawyers aren't going to make billions in contingency fees from their frivolous suits.

Texas Voters Approve \$2B for Water Plan

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 stewardship of water.

Coming up:

November 13, 2013

Advisory Committee for the Regulation and Control of Water (Drillers) Contractors
Noon
617 3rd Street, Baton Rouge LA

November 16, 2013

Land Trust for Louisiana, Annual Meeting
Propeller Incubator Building
New Orleans, LA

November 22, 2013

Soil Subsidence Seminar
Tulane University
New Orleans, LA

February 21-23, 2014

Tulane Environmental Law Summit
Tulane Law School
New Orleans, LA

Tulane Institute
on Water Resources Law & Policy

6329 Freret Street, Suite 155G
New Orleans, LA 70118
504-865-5982

<http://www.law.tulane.edu/tlscenters/waterlaw/>

In recent years Texans have seen a brutal drought, and the state has made plays for water [from nearly every neighbor](#). Last year the state approved a [water plan](#) that promises to dedicate 20% to water conservation, but the other 80% relies heavily on new dams and reservoirs, desalination, and pipelines. Well, the voters have had their say and [have approved](#) a constitutional amendment to fund these projects with \$2B in seed money from the state's rainy day fund. The plan does not [account for climate change](#) – hence the widespread bipartisan support. Texas' neighbors shouldn't drop their guard just yet.

Change in Clean Water Violation Rates Does Not Change BP's potential liability for Deepwater Horizon Disaster

From time to time, the EPA increases the civil penalties of acts that it enforces beyond the penalty rates in the original acts. [This month](#) the EPA has done just that for several acts, but right now most questions have centered on the applicability of these rate changes to BP and the *Deepwater Horizon* disaster. These changes, which raise the potential liability for an oil spill caused by gross negligence from \$4,300 to \$5,300, will apply to future spills, not past spills currently in litigation.

White House Releases Executive Order to Form Climate Change Task Force

President Obama took another [step](#) towards preparing the country for climate change impacts. The [executive order](#) creates a council of federal agencies and a task force of state and tribal officials [tasked](#) with improving the nation's "climate preparedness and resilience." Pursuant to the President's [Climate Action Plan](#), the interagency council is directed to remove barriers to increasing climate change resilience, reform policies that may "increase the vulnerability of natural or built systems, economic sectors, natural resources, or communities to climate change related risks," and provide for smarter, climate-resilient investments by states, local communities, and tribes. The task force, which includes seven governors, will "advise the Administration on how the Federal Government can respond to the needs of communities nationwide that are dealing with the impacts of climate change."

The People Have Spoken: Fracking Should be Banned—Sometimes, Some Places.

The controversial practice of hydro-fracking to produce oil and gas moved into the voting booth in Ohio and Colorado in early November. After all the ads, petitions, voter forums, and dire warnings of economic or ecologic impacts and the [votes were counted](#), the result in four cities—three in Colorado and one in Ohio—was that fracking should be banned or temporarily halted. On the other hand, voters in two other Ohio towns rejected fracking bans.

Coast Guard Seeks Input on Barging of Fracking Waste Water

If your community has been feeling left out of the fracking tussles, you may have a chance to get in the game if you live along a waterway used by tugs and barges. Even the safest fracked wells produce waters that may be laced with added or natural contaminants, including radioactive ones, and need a home after their work is done. The idea of [barging](#) those waters to Texas and Louisiana for disposal has surfaced and the Coast Guard is seeking [public input](#). Based on our own inboxes, we can say with comfort that some folks are very concerned about the safety of those barges and the impacts that could flow from a barge rupture or sinking. It also might work against the interests of some [currently in the business](#) of dealing with those waters. If you are interested, the comment period closes November 29.