

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy
January 22, 2014

West Virginia Chemical Spill Company Files for Bankruptcy & Guess Who Might Pick Up the Tab

Remember back in 2005 when bankruptcy rights were [tightened](#)? Well, luckily for Freedom Industries, that just applied to individual people and not corporate people. Therefore, the company, whose spill polluted the Elk River and drinking water for more than 300,000 residents, [filed for Chapter 11](#) last Friday. In the bankruptcy documents, the company states it faces more than 20 lawsuits. Though it likely doesn't have the funds to pay those suits, what funds the company does have will be off limits from aggrieved parties. Yesterday, Freedom secured up to [\\$4 million in credit](#) from a lender to continue operations and environmental cleanup. Residents welcome additional cleanup measures as [officials announced yesterday](#) that a second, previously unreported chemical, called PPH, was also in the storage container that leaked into the Elk River on January 9. While this chemical is likely removed by water treatment plants, the delay in notifying the public of the second chemical is emblematic of the [opaque response](#) to the spill by government officials, according to some media groups.

Turning back to the issue of liability, the documents suggest that the local water utility might be to blame for a broken water line that hypothetically could have led to the tank puncture. One has to expect Freedom Industries to make every attempt to shift responsibility for the spill onto the water utility or somebody else but if they are successful it will pave the way for the liability created by the spill to be paid with rate increases on the very customers harmed in the first place. Perhaps the lesson here is that these risks need to be honestly assessed and managed on the front end so it is less likely that communities have to live with events and outcomes like this.

In California Fracking Might Be Less Important than Water

California is in a [state of emergency](#) due to the continuing drought, and is asking residents and businesses to cut water usage by 20%. Sacramento is going one step farther and requiring water [rationing](#). And dozens of groups are pressing Gov. Brown for a [fracking moratorium](#). Commenting on the state's new fracking regulations, the groups' letter to the Governor claims that fracking's significant water usage and potential for water contamination conflicts with the state's already-limited resources. The letter comes on the last day to comment on the state's proposed fracking regulations. The

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:

February 21-22, 2014

[Tulane Summit on Environmental Law & Policy](#)
Tulane Law School
New Orleans, LA

March 18-20, 2014

[State of the Coast 2014](#)
Ernest N. Morial Convention Center
New Orleans, LA

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regulations were mandated by a law passed last year – a law that was met with mixed support by the groups that are now opposing fracking entirely. What has changed? Well, for one thing, the state’s drought has worsened, and it seems as though water is being valued even more in a state where it has always been at a [premium](#).

Spending Bill Passes Congress & Puts Off Flood Insurance Hike for Some Properties

Amazingly, Congress managed to pass a budget bill last week with minimal wailing and gnashing of teeth. Included in the budget is an [uptick](#) in funding for the Corps of Engineers, but the bill limits those funds to only four new projects and only one of the four may be an environmental restoration project (at least nine projects are up for authorization in the WRDA bill that is still in conference). The budget bill also [prohibits](#) the Corps from tightening water permit requirements for mining waste (one of the few riders to make it into the bill).

One other rider in the bill delays by four years the National Flood Insurance Program rate [increases](#) for primary residences that have not suffered repeated flooding. Wider changes to NFIP will be in discussion when the Homeowner Flood Insurance Affordability Act is discussed in the Senate in coming weeks.

Texas Comptroller Issues Water Report, Things are Bad and It’s Time for Game-Changers

Texas Comptroller Susan Combs’ office released “[Texas Water Report: Going Deeper for a Solution](#)” last week. The report [focuses](#) on the state’s water challenges, potential solutions, and policy recommendations. The report states that conservation isn’t doing enough and that the state needs a technological shift to increase conservation and to widen the resources available to the state. The report bemoans the deficit of water released by Mexico into the Rio Grande, the whooping cranes’ need for a place to live, and the Supreme Court’s decision to keep Ft. Worth from getting water out of Oklahoma. The report cites the difficulty of getting water from Canada or Alaska, but doesn’t mention specifics for getting water from nearer sources. The report discusses improved water efficiency in fracking, but doesn’t go so far as to make regulatory recommendations. Recommendations for the Texas legislature do include establishing grant programs for conservation, innovative demonstration projects, and awards for innovative technology. While it is clear that Texas’ water reality and its vision for its future are often in conflict, that doesn’t make it unique. What may make it unique is whether or not it really can “change the game.” After all, what game is there in Texas besides football?

Back to the Future: Coke and Pepsi Selling Water as Much as Soda, But to Sell More Water They’ll Make it More Like Soda

The bottled water business has long been a strange beast that mixes limited actual need and heightened quality with ginned up demand that is sometimes accomplished by sowing doubts about the safety of the very public water supplies that are the source of supply for many brands of bottled water. But the business continues to grow and Coke and Pepsi are on track to [sell more water](#) than soda by the end of the decade. However, it seems people are less choosy about brand names for water than they are for whatever-you-want-to-call-sweetened-carbonated-beverages, and Coke & Pepsi are not making enough money in grocery stores where they have to go up against house branded water. Solution? They’re looking to add flavors, carbonation, and vitamins and minerals to make their water a premium item. Can cola flavored sparkling spring water be far off?

Troubles for Hong Kong Water Supply on the Horizon

Water supply issues aren’t just for arid regions anymore! Water is getting more and more expensive for Hong Kong, but users won’t notice. The city gets its water from Guangdong Province, but it is hardly alone, and the price can be sure to go up as development in the region continues. Luckily for Hong Kong, they’ve got nowhere to go but up! They seem to be doing [everything wrong](#) when it comes to water. There is nothing underway for conservation; rates are highly subsidized, so use is excessive, and infrastructure is poor, so loss is great. Also, water management appears to be everyone’s job and no one’s job at the same time. A Hong Kong think tank is encouraging the city to look to Singapore as an example of effective water management as the island-state is more than halfway towards a century-long goal of going from importing 100% of its water to being completely water self-sufficient. Hong Kong had better get a move on, since yet another job has been proposed for water in China – [cleaning the air](#).