

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy
February 13, 2019

[There's a Map for That](#)

Ever eaten funny-tasting fish? Perhaps it was a clownfish, or perhaps the fish was contaminated . . . A new [interactive map](#) created by LDEQ shows 58 Louisiana waterbodies where contaminated fish have been caught; where pollution has rendered the area unsafe for swimming; or both. The map's advisories also detail which chemical, heavy metal, or other substance causes the problem. For example, the biggest advisory includes all state waters in the Gulf of Mexico due to mercury concerns. An LDEQ scientist [explained](#) that the Gulf advisory is most likely because the fish are "highly predatory," not because there is more mercury in the ocean. That is, a fish that eats another fish also takes in the mercury that the other fish has eaten. Give a man a fish, and feed him for a day. Teach a man where not to fish, and feed him safely for a lifetime.

[Money \(That's What I Want\)](#)

The state of Mississippi has sued the federal government regarding the [Old River Control Structure](#) located in Louisiana. The Old River Control Structure is a dam complex that prevents the Mississippi River from shifting course to the Atchafalaya River, which offers a shorter, steeper route to the Gulf of Mexico. Such a shift could cut off the current source of fresh drinking water in New Orleans and for industrial use at dozens of chemical plants in south Louisiana. It would also create major obstacles along a key shipping route. Is Mississippi proposing [changing course](#) for [Ol' Man River](#)?

No. The Mississippi Secretary of State [says](#) the lawsuit is not challenging the decision to control the river's course. Rather, he says that Mississippi deserves at least \$25 million in damages because nearly 8,000 acres in public land in Mississippi is being degraded by increased flooding due to the structure. The lawsuit asserts that the federal government is taking the land without compensation and should pay for it. However, there could be other factors driving the flooding too, such as upstream development and heavy rains upstream that could be related to climate change. The suit touches on a sensitive engineering question—the Army Corps of Engineers' [efforts to control the Mississippi River](#).

How Do You Keep Someone in Suspense? We'll Tell You Next Week

In early January, the EPA said that its groundwater discharge policy would be released "within the next several weeks," but now the agency says the policy likely will not be released until the spring (this feels like [Punxsutawney Phil's](#) doing). Specifically, the EPA is considering whether the Clean Water Act should apply to pollution that first moves through groundwater before reaching a federally

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:

[CPRA Board Meeting](#)

February 20, 2019
New Orleans, LA

[Coastal Law CLE](#)

March 14-15, 2019
New Orleans, LA

[Tulane Environmental Law Summit](#)

March 22 & 23, 2019
New Orleans, LA

Water jobs:

[Associate Attorney](#)

Earthjustice
Washington, DC

[Environmental Justice Staff Attorney](#)

Chesapeake Bay Foundation
Annapolis, MD

[Gulf Program Manager](#)

SouthWings
New Orleans, LA

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regulated waterway. The agency previously supported a broad interpretation, which would require permits for pollution-via-groundwater with a direct hydrological connection to federal water. However, last year, the EPA took public comment on whether to revisit that policy. Critics of the broad stance argue that it vastly expands the statute.

Currently, the Supreme Court is considering whether to review two cases in which circuit courts applied the broader definition, agreeing with environmental groups and previous EPA filings (see [County of Maui v. Hawai'i Wildlife Fund](#) and [Kinder Morgan Energy Partners LP v. Upstate Forever](#)). Other recent decisions in the 4th and 6th Circuits have either rejected that approach entirely or set limits on it (see [Sierra Club v. Virginia Electric Power Co.](#) and [Tennessee Clean Water Network v. Tennessee Valley Authority](#)). The court is scheduled to confer about the *Maui* and *Kinder Morgan* cases on Friday. If the justices agree to hear one or both, they will likely schedule review for the 2019-20 court term. Many environmental experts expect the high court to accept at least one of the cases, and the EPA's forthcoming policy will play an influential role in future court proceedings. We'll monitor the situation, so [stay tuned](#).

No, No, No, Build THAT wall!

In St. James Parish in Louisiana, a company called Mosaic runs its Uncle Sam fertilizer plant, and the manufacturing process yields gypsum and acidic wastewater. The wastewater is stored in a retention pond on top of a nearly 200 foot tall mound of gypsum. In December, a farmer alerted the company that the side of one of its gypsum walls was moving. In an effort to prevent the collapse of the wall, which is holding more than 700 million gallons of the acidic wastewater, the company has been siphoning hazardous wastewater out of the retaining pond into other retaining ponds at the facility. Dump trucks are hauling in dirt to buttress the slipping wall. However, in the event that the wall fails despite the company's efforts, Mosaic has [written a letter to the EPA](#) outlining preparations to try to prevent the wastewater from contaminating surrounding wetlands. These plans include installing or staging plugs for nearby culverts to try to contain the wastewater and adjusting the acidity of the wastewater, e.g., adding lime to the wastewater to make it less acidic.

Environmentalists have [warned](#) that if the wall collapses it could send the wastewater into nearby tributaries that feed into Maurepas Swamp. [With a pH of 2](#), the wastewater could affect fish, animals, and plants living in the water. Additionally, there are about a dozen residents who live within the area where the wastewater is likely to flow, should it escape the facility. Too bad the President has not channeled his some of his [wall-building-enthusiasm](#) into this. Oh, and did we mention that the [water is also radioactive](#)?

Maybe when (if?) this immediate emergency gets under control there should be a chat about whether it was a good idea in the first place to create a situation where a torrent radioactive lemon juice could be released into wetlands and private homeowner's property. One only has to dive into the shallow end of the [Spider-Man canon](#) to know how poorly this kind of thing usually works out!

Attention, Innovators!

Do you have an idea to help tackle the world's plastic problem? *National Geographic* and Sky Ocean Ventures have launched [The Ocean Plastic Innovation Challenge](#). This is a competition focused on three strategic ways to address the growing issue of plastic pollution: designing alternatives to single-use plastics; identifying opportunities for industries to address plastic waste throughout supply chains; and communicating the breadth of the issue through data visualization. Each track is eligible for prizes totaling up to \$500,000 and the opportunity for further investments and business mentoring. So, put on your thinking caps and brainstorm for a "[Great Scott!](#)"-worthy idea before the June 11 deadline.

Can't Get Enough Water News?

Admit it: between the award worthy journalism and [feel-good videos](#), this newsletter is the highlight of your week. So, if you need to get your H₂O fix as you eagerly await next week's edition of TUWW, check out "[This Day in Water History](#)."