

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law and Policy
June 11, 2014

Duke Energy Agrees to Clean Up Spilled Coal Ash in Dan River, well, within Reason

On Monday, Duke entered into [an agreement](#) with U.S. Fish and Wildlife, North Carolina, Department of Environment and Natural Resources, and Virginia Department of Environmental Quality to clean up the February 2nd spill, which [coated 70 miles of river in sludge](#). Under the terms of the agreement, Duke will pay reasonable costs associated with the cleanup and perform or fund future monitoring and studies where there are currently data gaps. There is no spending cap for Duke in the agreement. N.C. Department of Environment and Natural Resources spokeswoman Susan Massengale said Monday that the agreement contains "a process that attempts to avoid lawsuits by the parties," but it does not bar the states from filing suit if the company reneges on its commitments. Duke signed a [similar agreement](#) with EPA last month.

Complexity of "Waters of the United States" Interpretive Rule Garners Congressional Attention, Potential Time Extension

Rep. Bob Gibbs, chairman of the Water Resources and Environment Subcommittee, will hold a [hearing today](#) to examine the potential impacts of the proposed EPA-Army Corps Rule defining "Waters of the United States." Representatives from EPA and the Corps are slated to testify, as are various special interest groups representing farmers, homebuilders, utilities, water managers, and more. The proposed rule has attracted significant attention and opposition, and speculation about its effects range wildly. The comment period is currently set to end July 21; however, [unconfirmed reports](#) say that EPA will extend the comment period to ensure robust public participation.

BP Settlement Payments Still Flowing While SCOTUS Decides Whether to Review Settlement Agreement

BP wanted to [suspend payments](#) to individuals and businesses while it appealed the 5th Circuit's decision upholding the settlement agreement governing the claims process for people and businesses injured in the wake of the 2010 *Deepwater Horizon* disaster. On Monday, the U.S. Supreme Court [refused the request](#). Undeterred, BP spokesman Geoff Morrell said that the oil giant "looks forward to pursuing" its request for review of the settlement itself. However, as Loyola of New Orleans law professor Blaine LeCesne put it, "This ruling . . . is more likely a penultimate ending of BP's quest to throw out

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:

[Restore America's Estuaries and Coastal Society Summit on Coastal and Estuarine Restoration](#)

November 1-6, 2014
Washington, DC

[Chicago Water Summit](#)

July 21, 2014
Chicago, IL

Water jobs:

[Water Resources Manager](#)
Mississippi River Network &
National Wildlife Federation
Washington, DC

[Executive Director](#)
Center for Climate Change Law,
Columbia Law School

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/>

TWITTER: [@TulaneWaterLaw](#)

the settlement.” LeCesne said that BP could see all of the claims processed and paid by the time the Supreme Court hears the case, which is no guarantee.

New York and Jersey Get \$920 Million to Fortify Against the Next Sandy

In the wake of Hurricane Sandy, the ideas of how to prevent future destruction from similar storms started to flow en masse. So the Rebuild by Design competition, led by the U.S. Department of Housing and Urban Development, was created to find the best ideas. Now, nearly two years later, [winners were chosen](#) for roughly \$1 billion in stormproofing coming to the area. Lower Manhattan will get a 16-foot, U-shaped levee to guard its edge. Staten Island’s South Shore will get an underwater oyster shelf to slow storm surge and revive the marine ecology. And a new pier at Hunts Point in the Bronx, a critical hub that supplies much of the city’s food, will be able to function and operate in the face of storms. Check out the [project renderings](#) to get a better understanding of what will be built. More projects will be announced over time. Construction dates have yet to be set.

Pres. Obama and Gov. Jindal Wield Their Mighty Pens across Water-Related Legislation

Yesterday, President Obama [signed](#) the Water Resources and Reform Development Act. This is the first time in seven years that a president has inked a water resources development bill. Until this seven year drought, Congress would typically pass these bills every two years. For the sake of [the aging infrastructure in the U.S.](#), let’s hope they get back on the two-year track.

Over the last week, Jindal signed two pieces of water-related legislation. First, against the advice of Attorney General Buddy Caldwell and legal scholars across the country, he signed the controversial SB 469, which will retroactively kill a coastal erosion lawsuit against 97 oil, gas, and pipeline companies and potentially other current and future suits. Officials [expect](#) to see motions to dismiss the flood protection authority and other oil spill cases based on SB 469 in the near future. In defending the legislation, [Jindal said that](#), “This bill will help stop frivolous lawsuits and create a more fair and predictable legal environment, and I am proud to sign it into law. It further improves Louisiana’s legal environment by reducing unnecessary claims that burden businesses so that we can bring even more jobs to our state.” (Full disclosure note: Institute director Mark Davis was one of those “legal scholars” urging a veto.)

On a brighter note and in a rare act of solidarity, the State legislature unanimously passed [an act](#) to ward off future encounters with the brain-eating amoebas. Gov. Jindal [signed the bill into law](#), which sets a minimum amount of chlorine to be in all water systems in the state. Over the past year, the brain-eating amoebas have been found in St. Bernard and DeSoto Parish water systems and killed a St. Bernard Parish child.

Bake Sales and Lemonade Stands to Battle for Fundraising Supremacy Amid Local and State Government Regulation of Carwashes

Ah, the carwash. A classic way to raise money with little upfront cost, a can-do attitude, and some elbow grease. Well, it appears that may be a thing of the past. The [arid west](#) has largely restricted or discouraged washing cars as a conservation measure. Now, Arlington is [cracking down](#) on the practice, except when in front of your home, in order to reduce urban pollution runoff into the Chesapeake Bay. While one carwash contributes little pollution, the sum of all the carwash fundraisers with their detergents, cleansers, and sprays do have an impact on the quality of the stormwater runoff. Government officials, however, see the regulation as an opportunity to teach kids about responsible ways to wash cars that won’t pollute and are down playing the enforcement side of the equation.

SCOTUS Finds that State Statutes of Repose Apply to Superfund Sites

A statute of repose (decidedly not the title of an undiscovered [Wallace Stegner](#) novel) ends liability for a defendant after a specific period of time lapses from when the defendant stops doing the culpable act. The goal is to encourage timely filing of claims on the part of the plaintiff and give a defendant piece of mind after the period lapses. In a 7-2 [decision](#), the U.S. Supreme Court held that the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) did not preempt state statutes of repose. In the underlying facts of the case, a North Carolina manufacturing facility owned shut down in 1987. Neighboring landowners went about their lives until the EPA informed them in 2009 that their well water was

contaminated by hazardous substances. Those landowners then filed an action against the manufacturer in 2011.

At the heart of the case is section 9658 of CERCLA, which preempts state statutes of limitations for tort actions for personal injury or property damage arising from the release of a hazardous substances. SCOTUS, however, found that the text of Section 9658 demonstrated a congressional intent to exclude statutes of repose from the general exemption. While only three other states in addition to North Carolina have an applicable statute of repose, the [potential fallout](#) could reach other areas of law that interact with statutes of repose and will certainly have implications for the ongoing litigation, currently before the 11th Circuit brought by North Carolina families trying to sue the federal government over [groundwater contamination](#) at Camp Lejeune Marine Corps Base.

National Geographic Expecting to Turn Heads with Latest Artic Map

The little explorer in each of us always perks up when confronted with a map. Its ability to inform and inspire go back to the beginning of cartography. National Geographic hopes to accomplish both goals when it comes to the [arctic map](#) in the soon-to-be-released 10th Edition *Atlas of the World*. The reduction in multiyear ice – ice that has existed for at least two summers – is so noticeable as compared to the 9th edition, National Geographic Geographer Juan José Valdés says it's “the biggest visible change other than the breakup of the U.S.S.R.” Valdés hopes the visual power of the map will inform the public of the extent of global warming and, perhaps, inspire policies that address global warming.