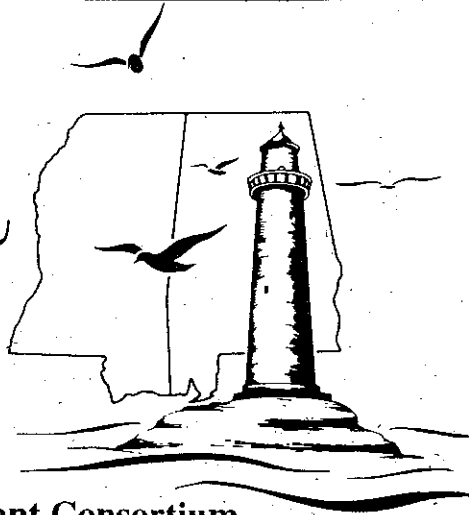


WATER LOG



A Legal Reporter of the
Mississippi-Alabama Sea Grant Consortium

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WATER LOG

WATER LOG is a quarterly publication reporting on legal issues affecting the Mississippi-Alabama coastal area. Its purpose is to increase public awareness and understanding of coastal problems and issues.

If you would like to receive future issues of WATER LOG free of charge, please send your name and address to: Mississippi-Alabama Sea Grant Legal Program, University of Mississippi Law Center, University, MS 38677. We welcome suggestions for topics you would like to see covered in WATER LOG.

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Arkansas v. Oklahoma

112 S.Ct. 1046, 117 L.Ed. 2d 239 (1992)

by John Farrow Matlock

The United States Supreme Court rules an EPA permit for discharging pollutants into a body of water cannot be denied on grounds that it will worsen water quality if the damage will not be detectable

FACTS

The Environmental Protection Agency issued a permit to the city of Fayetteville, Arkansas in 1985 allowing the city to dump up to half its treated sewage into a stream that drains into the Illinois River, which the Oklahoma legislature has designated a "scenic river." The permit imposed limits on the amount and content of the discharge and provided that the permit could be modified if necessary to ensure compliance with water quality standards promulgated by Oklahoma. The state of Oklahoma challenged the permit before EPA on the grounds that the water discharged from the Fayetteville plant violated Oklahoma's "anti-degradation policy," which provides that "no degradation shall be allowed in high-quality waters, which include scenic rivers." Oklahoma Statutes, Title 82, § 1452(b)(1). EPA's administrative law judge affirmed the issuance of the permit, ruling that the discharge would not have an "undue impact" on Oklahoma's waters. Oklahoma then petitioned for review. EPA's Chief Judicial Officer ruled that both section 301(b)(1)(C) of the Clean Water Act, 33 U.S.C. §§ 1251-1387, and EPA regulations required the plant for which the permit was sought to follow all applicable state standards, including those of states into which the stream in question flowed. He also determined that the statute imposed a more stringent standard for evaluating discharges than "undue impact," and remanded the case, instructing the administrative judge to uphold the permit only upon a showing that "the authorized discharges would not cause an actual detectable violation of Oklahoma's water quality standards." On remand the administrative judge found that the discharges would result in no discernible violation of Oklahoma's standards and upheld the issuance of the permit. Both Oklahoma and Arkansas sought judicial review of issuance of the permit: Arkansas argued that the Clean Water Act did not require a point source in Arkansas to comply with Oklahoma's water

quality standards, and Oklahoma challenged EPA's finding the discharge from Arkansas would not perceptibly violate Oklahoma's clean water standards.

The Court of the Appeals for the Tenth Circuit reversed the issuance of the permit. *Oklahoma v. EPA*, 908 F.2d 595 (10th Cir. 1990). The court read the Clean Water Act to require the sewage plant in Arkansas to comply with Oklahoma's standards and did not demur from the administrative judge's findings of fact, but held that no permit could be issued under the statute "where a proposed source would discharge effluents that would contribute to conditions currently constituting a violation of applicable water quality standards." Finding that the Illinois River in Oklahoma was already polluted and that some of the discharge from Arkansas would reach Oklahoma, the court held the aggravation sufficient to deny the permit even though no detectable change in the river's water should occur. Both Arkansas and EPA filed petitions for a writ of certiorari from the United States Supreme Court.

ANALYSIS

Justice Stevens, writing for the Court, began by remarking that federal law in the form of the Clean Water Act preempts state common law remedies for nuisance caused by polluting upstream waters. Under the Clean Water Act, the federal government establishes "effluent limitations" to be promulgated by EPA, while water quality standards are left to the states. Thus a state may limit sources of pollution even where the sources taken individually meet EPA's effluent limitations, if the sources together would cause violations of the state's water quality standards. These limitations and standards are enforced through the National Pollution Discharge Elimination System (NPDES), 33 U.S.C. § 1311. NPDES establishes a two-tiered permitting regime, comprising state permit programs that must satisfy federal requirements and be approved by EPA, and a federal program administered by EPA.

Section 402(b) of the Clean Water Act authorizes the states to set up permit programs for discharges into their own waters; the permit programs must include provisions designed to protect the waters of states downstream. Downstream states have no authority to veto the issuance of permits by upstream states, but the EPA Administrator may prevent the issuance of such a permit. The Administrator follows the same procedures in issuing NPDES permits. EPA may issue NPDES permits where there is not an

approved state program under the Clean Water Act. (In the present case, the permit was issued by EPA because Arkansas had not been given authority to issue NPDES permits.)

The Court refused to address whether the Act requires EPA to comply with water quality standards of downstream states, noting that EPA assumed the Act so required and that its own regulations ensure that the discharge from the plant in Arkansas would meet Oklahoma's standards. The Court held that Clean Water Act clearly did not limit EPA's authority to mandate compliance with Oklahoma's water quality standards, even if the Act itself does not so require. The Court cited EPA regulations in force since 1973 which provide that NPDES permits shall not issue when compliance with the water quality requirements of all affected states cannot be ensured. The court held these regulations a reasonable exercise of EPA's statutory authority. Likewise the Court held that regulations granting broad discretion to the EPA Administrator in establishing conditions for NPDES permits and in authorizing him to establish conditions for permit programs in the states were reasonable exercises of the Agency's statutory discretion and consistent with the purposes of the Clean Water Act. The Court further held Agency regulations conditioning NPDES permits to be a "well-tailored means of achieving this goal." Addressing various arguments put forward by Arkansas, the Court observed that EPA had clear statutory authority for requiring a source discharging pollutants to comply with downstream water quality standards.

The Court proceeded to take up the Court of Appeals' assertion that the Clean Water Act prohibits any contaminated discharges that would reach waters already in violation of existing water quality standards. The Court held this construction of the Act entirely lacking in statutory or judicial authority. The Tenth Circuit reached this conclusion, said the Court, by drawing a false analogy from the Act's ban on of public sewage treatment facilities accepting further pollutants for treatment until the violation has been corrected. Nowhere does the Act impose a total prohibition of discharges into waters that fail to meet water quality standards.

Neither was EPA's issuance of the Fayetteville permit arbitrary and capricious because it was based on an erroneous reading of Oklahoma's water quality standards. Observing that Oklahoma's regulations did not appear to support such an interpretation, the Court declared that in any case the Tenth Circuit had exceeded the legitimate scope of judicial review. EPA's regulations do require NPDES permits to comply with water quality standards of affected states, in effect incorporating state standards into

federal law. Because of the mixed state and federal nature of Oklahoma's water standards, the Court held that the "Oklahoma standards have a federal character, [and] EPA's reasonable, consistently held interpretation of those standards is entitled to substantial deference." The Court held reasonable both the administrative judge's reading of the Oklahoma's standards to mean that there would be a violation only if the discharge caused measurable changes in the waters of the Illinois River and EPA's application of the standards. On remand the administrative judge considered four reliable gauges of water quality—eutrophication, aesthetics, dissolved oxygen, and metals—and found that the discharge from Arkansas would cause no detectable change in the Illinois River in Oklahoma. The Court then cited the Tenth Circuit's "three mutually compounding errors": failing to give due regard to EPA's interpretation of its own regulations as incorporating the Oklahoma standards, disregard of well-established standards of review, and incorrectly finding the decision arbitrary and capricious. The Court concluded that "the Court of Appeals made a policy choice that it was not authorized to make."

CONCLUSION

The decision in this case demonstrates that in environmental matters the Supreme Court will not tolerate judicial activism; it will rather accord substantial deference to the decisions of agencies of the executive branch. The increasing reluctance of the federal courts to upset actions of the executive will render ever more important the degree of EPA's commitment to protecting the nation's interstate waters. □

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United States v. Alaska

112 S.Ct. 1606, 118 L.Ed. 2d 222 (1992)

by John Farrow Matlock

The United States Supreme Court rules the Corps of Engineers may consider a project's effect on federal-state seaward boundary lines in deciding whether to grant a construction permit

INTRODUCTION

In 1982, the city of Nome, Alaska, which is not connected to the rest of the state by road and can be reached only by air or sea, applied for a permit from the United States Army Corps of Engineers to build a large port, which would have included a causeway, a breakwater, and an offshore terminal in Norton Sound. The United States Department of the Interior objected to issuance of the permit, on the grounds that the construction would cause artificial alteration to the legal coast line, which forms the boundary between state and federal lands. Under the Submerged Lands Act, 43 U.S.C. §§ 1301 *et seq.*, Alaska owns submerged lands to a line extending three miles out from its coast line. The seaward boundary of state-owned lands is measured from a baseline that is subject to change from natural accretion and artificial alterations. *United States v. California*, 381 U.S. 139, 176-77 (1965).

The Department of the Interior recommended that the permit should be granted only if Alaska would agree to recognize the same boundary as existed before construction commenced. Alaska provisionally disclaimed its rights to any submerged lands it might gain by artificial alteration, but the state reserved its rights in those submerged lands until a federal court should decide whether the federal government had authority to compel a state to surrender sovereignty as a condition for the issuance of a permit.

In 1988 the federal Minerals Management Service proposed to lease mineral rights in Norton Sound near Nome. The state of Alaska challenged the lease, contending that 730 acres of the submerged lands subject to the lease belonged to Alaska as part of the Nome project. The Supreme Court of the United States agreed to hear the matter in 1991.

ANALYSIS

Writing for a unanimous Court, Justice White first noted that the Rivers and Harbors Appropriation Act of 1899, 33 U.S.C. §§ 401 *et seq.*, has been expansively construed to give the Corps of Engineers considerable discretion in denying permits for the construction of harbors. While the question of whether a project will impair the navigability of a harbor has always been paramount, the Corps may also take into account the effects of construction on fish, wildlife, water quality, and other aspects of the public interest. The Court rejected Alaska's contention that the regulations promulgated under the River and Harbors Act governing the granting of permits were too broad in allowing the Corps to consider matters other than navigability.

Alaska also argued that the regulation was invalid because it gave the Corps of Engineers power to deny permits on the grounds that a project might cause a change in federal-state boundary lines. This argument failed to sway the Court, which observed that the Corps was only exercising its discretion in preventing a state from acquiring control over submerged lands by artificial alteration to the detriment of the United States.

Alaska then sought to overturn the regulation by arguing that in some cases there could be "two coast lines" if a state were not allowed to measure its coast line based on artificial alterations (according to international law, the boundaries of a nation's territorial sea and exclusive economic zone take into account manmade changes in the coast line). The Court pointed out that where the two boundary lines do not coincide, a fairly common occurrence, few problems of administration have arisen.

The state also asserted that the Corps of Engineers lacked authority to compel a state to relinquish its rights in submerged lands in exchange for issuance of a construction permit. The Court remarked that the regulations state that the Corps may consider the "effects of the proposed work on the outer continental rights of the United States," 33 C.F.R. §320.4(f), and that it would be fatuous to suppose that Congress intended to give the Corps power to deny permits altogether but not to condition issuance of permits on a state's surrender of rights to submerged lands. The Court concluded by declaring that the Corps' actions were not arbitrary or capricious, and that Alaska's disclaimer of rights in submerged lands had been lawfully executed as a condition for issuance of the permit.

CONCLUSION

Many of the nation's seaboard states have interpreted the Supreme Court's decision as granting the Corps of Engineers authority to fix a state's seaward boundary. Although this view may be somewhat exaggerated, it is clear that the executive branch of the federal government will not easily give up its sovereignty over submerged lands. Future efforts by coastal states to extend their control over submerged lands must now center on the halls of Congress. □

John Farrow Matlock is a third-year student at the University of Mississippi Law School and a research associate with the Mississippi-Alabama Sea Grant Legal Program.

Marine Aquaculture in Mississippi — An Update

by Ellen M. Peel

INTRODUCTION

The last issue of WATER LOG, Vol. II, No. 4, 1991, was a special issue devoted to Mississippi's development of guidelines for its new marine aquaculture industry. This article updates the status of the industry guidelines and reviews current activity surrounding the beginning of net pen farming off the Mississippi coast.

GUIDELINE UPDATE

The most recent public hearing to receive public comments concerning Mississippi's proposed marine aquaculture guidelines was held in Biloxi, Mississippi on March 23, 1992. A variety of interests were represented including the tourism and shrimping industries, the Sierra Club, individual coastal users, aquaculturists, the National Park Service, Congressional staff representatives, the Corps of Engineers, Mississippi's Office of the Secretary of State, realtors, coastal residents, recreational boaters and fishermen, marine biologists, and local government officials. Issues raised included opposition to siting near a federally designated wilderness area; issuance of the lease prior to the permit; water quality discharge permitting; consistency compliance with the state's Coastal Management Program; obstruction to navigation; adverse impacts resulting from proposed guideline changes allowing a reduction in water depth below the net pens; and a need to provide someone other than the permittee with monitoring responsibility for its own mariculture operations.

After analyzing and incorporating the public's comments, the Bureau of Marine Resources (BMR) submitted a final version of the guidelines on April 27, 1992. The final guidelines contained one significant change. It was recommended that the monitoring program originally drafted as part of the overall industry guidelines be expanded and published separately. Thus the guidelines alone were approved as submitted with an effective date of May 30, 1992. Any appeal to the final version of the guidelines must be made within fourteen days of that date.

On May 28, 1992, BMR published copies of the proposed monitoring guidelines to be used for ensuring compliance with the marine aquaculture guidelines. This program, known as the Marine Aquaculture Environmental Monitoring Program (MAEMP), was approved for public distribution and comment during a 30-day period. A public hearing concerning the MAEMP is also to be scheduled, but a date has not yet been set. After this hearing and at the close of the public comment period, BMR will analyze the input, make needed changes, and submit the final monitoring program to the Commission on Wildlife, Fisheries and Parks (Commission) for approval. Individuals desiring a copy of the draft monitoring guidelines and information concerning the public hearing should write:

Bureau of Marine Resources
Attn: Jennifer Buchanan
2620 Beach Blvd.
Biloxi, MS 39531
(601) 385-5860

PROMOTER AND ENVIRONMENTAL GROUP ACTIVITIES

Promoters of net pen aquaculture in Mississippi were recently given a boost with the announcement that Mr. John Erickson, the net pen permittee, was appointed to serve on BMR's Citizen's Advisory Committee. (See article in *Times-Picayune*, p. A-1, A-6, May 26, 1992). The appointment clearly surprised many observers in light of the strong earlier comments directed toward the BMR by Mr. Erickson. (See letters in public record received by the BMR during the public comment period).

With the development of guidelines for Mississippi's marine aquaculture, citizen groups interested in minimizing potential detrimental impact upon coastal resources from marine aquaculture operations have also made their concerns known. The first public statements were made at the Commission's April meeting, where a resolution was read by a representative of the Mississippi Chapter of the Sierra Club outlining its opposition to the siting of net pen farms in coastal waters under the conditions allowed in the BMR guidelines. A letter was also received by BMR and the Commission, submitted by the National Parks and Conservation Association (NPCA), a citizens oversight association interested in protecting the integrity of areas under the jurisdiction of the National Park Service. The NPCA letter addressed the need for the state to take every precaution in

ensuring protection of the variety of species in the area. It also expressed a concern over the impact of noise and visual intrusion upon the Gulf Islands wilderness areas and the cumulative effects of the proposed net pen operations on the Gulf Islands National Seashore. (Copy of the NPCA letter is available from the author and BMR).

In addition, the Sierra Legal Defense Fund has joined the fray and has directed correspondence to a variety of state agencies with regulatory responsibility for the net pen farm operations. (See article in *Times Picayune* p. A-1, A-6, May 26, 1992). Issues of concern to the Sierra Legal Defense Fund include the need for a state water quality discharge permit (NPDES Permit); siting which allows for intrusion upon the federally designated wilderness areas; the reduction of the required water depth under each net pen; and leasing of public trust lands for private gain when the activity poses serious threats to the surrounding public trust resources. (Conversation with Mr. Robert Wiygul, Attorney for Sierra Legal Defense, May 1992).

CONCLUSION

Even though marine aquaculture is new to Mississippi, it should be no surprise that the subject has generated a good deal of attention. Conflicts between groups with differing views regarding the best use of the nation's coastal resources are not uncommon. In the case of marine aquaculture in Mississippi, the coastal wetlands and public trust land in which the new industry will be situated comprise the very resources upon which other state citizens are dependent for their survival. Given these disparate interests, it is essential that some compromise be reached that satisfies all of the involved parties. From the tone of the present exchange between concerned interests, it appears that they are moving toward litigation, which is the most costly option. □

Ellen M. Peel is a third-year student at the University of Mississippi Law School and a research associate for the Mississippi-Alabama Sea Grant Legal Program. The views expressed in this article are those of the author and do not necessarily express the views of the editors or the Mississippi-Alabama Sea Grant Consortium.

Overview of Selected State Agencies — The Alabama Department of Environmental Management

by John Farrow Matlock

INTRODUCTION

Alabama's Department of Environmental Management (ADEM) was established in 1982 by combining the offices of the Air Pollution Control Commission, the Water Improvement Commission, and the Water Well Standards Board with certain offices of the State Health Department. The Act that created ADEM, codified at Ala. Code §§ 22-22A-1 to -16, designates the Department as the state environmental control agency for purposes of federal environmental law. ADEM is also responsible for administering subsequently enacted federal programs such as the Resource Conservation and Recovery Act (RCRA) and underground storage tank programs. ADEM develops environmental policy for the state, promulgates rules and regulations concerning the environment, and is empowered to issue administrative orders and permits, and to revoke licenses and assess fines.

The director of ADEM is appointed by the members of the Environmental Management Commission, who are themselves appointed by the governor. The Office of the Director is made up of three administrative offices, including the Office of General Counsel, the Office of Public Affairs, and the Special Projects Office, which administers Alabama's Superfund program. The Special Projects Office Department has five divisions: the Air Division, which administers programs under the federal Clean Air Act and otherwise monitors air pollution; the Land Division, which administers programs under the federal Solid Waste Disposal Act and is responsible for state programs regulating waste dumps; the Water Division, which, in addition to administering the federal Safe Drinking Water Act, implements the Alabama Water Pollution Act and the Water Well Standards Act; the Field Operations Division, the purview of which is coastal matters; and the Permits and Services Division, the chief responsibility of which is for permits.

Rule-Making

ADEM's functions may be divided into three parts: rule-making, issuing permits, and enforcing regulations. Since the programs administered by ADEM are largely federal programs, the regulations adopted by ADEM are usually adapted from those promulgated by the federal government. The Alabama Administrative Procedures Act, Ala. Code §§ 41-22-1 to -27, governs ADEM's rule-making procedures. Proposed regulations are published in the *Alabama Administrative Monthly*, as well as in at least three newspapers of general circulation within the state. The public may submit comments on proposed rules, and at least one public hearing is held before the regulation takes force. At the hearing citizens concerned may voice objections or suggest modifications to the regulation. After the comment period and hearing or hearings, the regulation as revised is submitted to the Environmental Management Commission for adoption. The regulation then becomes effective five weeks after it is filed with the legislative reference service.

Permits

ADEM is responsible for issuing permits under a number of state and federal programs. Businesses apply for permits when they are contemplating new construction or the expansion of existing facilities. A representative of the applicant meets with ADEM staff to determine the scope of the activity for which the permit is being sought. After ADEM receives the application and the fee, it determines whether it will grant or deny the permit. Where issuance of a permit is approved, a draft permit is published in local newspapers and public comment is invited. Where the public interest warrants, a public hearing may be held.

Enforcement

ADEM's field inspectors report violations of regulations. The Department may respond by taking one or more of the following steps: informal action (e.g., telephone call or letter); notice of violation sent by certified mail; administrative order, which entitles the alleged violator to a conference with a representative of ADEM; fines, which can range from \$100 to \$25,000 per day per violation to a maximum of \$250,000; and litigation, either civil or criminal. Ala. Code § 22-221-7(c) allows appeals of administrative actions to be filed with the Environmental Management Commission. The Commission appoints a representative to conduct a hearing and make a recommendation to it.

Requests for Information

The recent upsurge in environmental litigation has led to a rise in the number of requests for information from ADEM. While most of ADEM's records are available for inspection by the public, persons interested in reviewing ADEM's files must request an appointment, which will be held at ADEM's office in Montgomery. Citizens may also request copies of records from ADEM's Permits and Services Division, so long as the request is made in writing and is reasonably specific in identifying the documents sought. (ADEM charges 40¢ per page copied.)□

John Farrow Matlock is a third-year student at the University of Mississippi Law School and a research associate with the Mississippi-Alabama Sea Grant Legal Program. This article is an adaptation of Olivia H. Jenkins' "Regulation by the Alabama Department of Environmental Management," which appeared in the January, 1992 issue of The Alabama Lawyer.

LAGNIAPPE

A Little Something Extra

On May 28th, the Mississippi Commission on Wildlife, Fisheries and Parks gave its approval to a U.S. Army Corps of Engineers proposed dredged material dump site in state waters about two miles south of Horn Island. The proposed dump site would be used for dredged material coming from channel-deepening projects around the mouth of the Pascagoula River and Bayou Casotte. The Corps disposal site would be located near the area leased to Sea Pride Industries, Inc. for its proposed net-pen aquaculture facilities (see, *supra* page 6). The Commission has required that a public forum be held so that coastal citizens may have an opportunity to comment on the proposed site. A date for the forum has not been set, but it will probably be held in late June or July. For information, call the Army Corps of Engineers at (205) 690-2724 or the Bureau of Marine Resources at (601) 385-5860.

The Alabama Department of Environmental Management (ADEM) has recently taken the first step toward the development of a State Wetland Conservation Plan (SWCP). As a result of interest by many groups in developing a comprehensive SWCP for Alabama, ADEM is facilitating a Wetlands Conservation and Management Initiative. A technical advisory committee has been formed to help guide the initiative. Participating in the committee will be ADEM staffers, environmental groups, wetlands scientists and representatives of state and federal agriculture, forestry, mining, construction, and development agencies. The primary goal of the advisory committee will be to provide for informational and technical development of the management initiative. To accomplish this, the advisory committee will:

- Initiate discussions with public and private organizations to seek their involvement and support;
- Assess wetlands issues — such as categorization, delineation, role of mitigation banking, etc. — as they affect Alabama;
- Identify and describe Alabama's wetland resources based on available or easily obtainable information;
- Summarize definitions currently in use for wetlands for purposes of the plan and potential use in the Alabama plan;

- Summarize available information on wetland location, types, functions, abundance, condition, etc.;
- Summarize available information on status and trends including gains and losses in area, gains and losses of wetland types and functions, causes of alteration, extent to which wetlands are now protected and the effects of losses;
- Assess efforts of states that have completed, or are in the process of completing, water quality standards for wetlands and their suitability for use in Alabama;
- Identify and describe major governmental and private efforts that affect Alabama wetlands;
- Identify existing public and private laws, programs, institutions and mechanisms available to conserve and manage wetland resources;
- Assess the various wetland classification systems and methodologies to determine their suitability for use in Alabama; and
- Assess the effort of states that have completed, or are in the process of completing, aesthetic and/or biological narrative criteria for wetlands and their suitability for use in Alabama.

For additional information on the wetlands initiative and other ADEM activities, see *ADEM Environmental Update*, Issue 16, March-April 1992 or call Richard Hulcher, (205) 271-7839, or Timothy Forester, (205) 271-7786.

On June 1, 1992, the United States Supreme Court handed down its opinion in *Chemical Waste Management v. Hunt* (No. 91-471), U.S.L.W. 4433, overturning an Alabama statute that placed limits on the importation of hazardous waste into Alabama for dumping. The statute, called the Holley Act, Ala. Code §§ 22-30B-1 *et seq.* (1990), was intended to curb importation of waste for disposal at a dump at Emelle, Alabama, the largest commercial dump for hazardous wastes in the country. (In 1989, 17 percent of all toxic waste disposed of in the United States was dumped at Emelle, 90 percent of which was from out of state.) The statute imposed a base fee of \$25.60 per ton on all toxic waste disposed of at commercial dumps in Alabama and an additional fee of \$72.00 per ton on toxic wastes brought in from out of state to be dumped. The decision of the Supreme Court reversed a recent decision by the Supreme Court of Alabama upholding the statute. An earlier Alabama statute, aimed at the same problem,

was declared invalid by a federal Court of Appeals in 1989.

The Court overturned the Holley Act on the grounds that it violated the commerce clause of the United States Constitution, which grants Congress "power to regulate commerce among the several states." The Court held that Alabama's imposition of a higher fee on out-of-state waste was an attempt to isolate itself from a national problem by raising barriers to the free flow of interstate commerce. The Court pointed out that Alabama failed to employ less burdensome means to effectuate its legitimate interests. Only Chief Justice Rehnquist dissented. While the decision is a tactical setback for Alabama, there is little doubt that at its next session the state legislature will again attempt to curtail the importation of toxic waste by passing new legislation drafted in light of the *Chemical Waste Management* opinion. WATER LOG will provide an analysis of this important decision in its next issue.

The Natural Resources Section of the Mississippi Bar Association will hold its fall seminar at the Ramada Coliseum in Jackson on November 10, 1992. The program will include papers on "Expiration of Oil and Gas Leases on 16th Section Lands," "Natural Gas Proration—Transportation and Marketing," "Timber Operations," "RCRA Reauthorization," "Solid Waste Disposal," and "Criminal Enforcement." For more information, contact John Crawford at P.O. Box 22567, Jackson, MS 39225-2567, (601) 949-4534.