

WATER LOG

A Legal Reporter of the Mississippi-Alabama
Sea Grant Consortium



Rip Currents and Landowner Liability *A Short Discussion of the Law*¹

Josh Clemons

Rip currents are dangerous surf phenomena described by the National Weather Service as “powerful, channeled currents of water flowing away from shore [that] typically extend from the shoreline, through the surf zone, and past the line of breaking waves. Rip currents can occur at any beach with breaking waves, including the Great Lakes” and are estimated to result in over one hundred drownings per year on U.S. beaches.² The National Weather Service and Sea Grant have teamed with the U.S. Lifesaving Association to raise awareness of the dangers of rip currents in order to reduce rip current fatalities and “Break the Grip of the Rip.”³

One good way to increase public awareness of rip currents is by distributing information and posting warning signs at beach areas. However, many beach-front landowners are hesitant to do so because they believe that it might increase their liability if someone drowns. This article will provide a very broad overview of the law of landowner liability, and perhaps will encourage people to warn their guests and customers about the dangers of rip currents. Only general principles are given; please bear in mind that the law varies somewhat from state to state, and that for formal legal advice you should seek the counsel of an attorney who is licensed to practice in your state.

See Rip Currents, page 8

Court Upholds Marine Diesel Engine Emission Rule

Bluewater Network v. Env'tl. Protection Agency, No. 03-1120 (D.C. Cir. June 22, 2004)

Josh Clemons

On June 22 the U.S. Court of Appeals for the D.C. Circuit rejected an environmental group's challenge to a U.S. Environmental Protection Agency (EPA) rule that sets emission standards for large marine diesel engines under the Clean Air Act (CAA).

See Bluewater, page 11

In This Issue . . .

Rip Currents and Landowner Liability	1
Court Upholds Marine Diesel Engine Emission Rule . . .	1
EPA Effluent Guidelines, Aquatic Animal Production Industry	2
Mississippi Court Reverses Itself on Wetland Permit	4
Bankruptcy Court Interprets Pollution Law	5
Fifth Circuit Rejects Platform Worker's LHWCA Claim	6
2004 Alabama Legislative Update	14
Lagniappe	15
Upcoming Conferences	16

EPA Effluent Guidelines, Aquatic Animal Production Industry *Final Rule - Fact Sheet*

[Ed. note: on June 30, 2004, the U.S. Environmental Protection Agency (EPA) finalized a rule to establish wastewater controls for concentrated aquatic animal production facilities (commonly referred to as fish farms). The regulation applies to about 245 facilities that generate wastewater from their operations and discharge that wastewater directly to waters of the United States. Reproduced here is EPA's fact sheet summarizing the rule.]

Summary

EPA is setting standards for the discharge of wastewater from concentrated aquatic animal production facilities (known as fish farms). This rule establishes effluent limitation guidelines and new source performance standards for specific types of commercial and non-commercial operations that produce aquatic animals for food, recreation and restoration of wild populations, pet trade, and other commercial products. Rather than setting numeric limits, we are requiring best management practices to control the discharge of pollutants in the wastewater from these facilities. We found that it is not necessary to establish pretreatment standards for existing or new facilities.

Background

On June 30, 2004, EPA's Acting Deputy Administrator signed a final rule to establish wastewater controls for concentrated aquatic animal production facilities (known as fish farms). The regulation applies to about 245 facilities that generate wastewater from their operations and discharge that wastewater directly to waters of the United States. When these requirements are applied in NPDES permits, they will help reduce discharges of conventional pollutants (mainly Total Suspended Solids), non-conventional pollutants (such as nutrients, drugs and chemicals) and, to a lesser extent, toxic pollutants (metals and PCBs).

In October 1989, the Natural Resources Defense Council and others sued EPA claiming the Agency had failed to comply with the Section 304(m) planning process required by the Clean Water Act. In January 1992, plaintiffs and EPA agreed to a settlement that established a schedule for EPA to promulgate effluent limitation guidelines for 11 specific industrial categories and for eight other categories to be determined by the Agency. EPA selected the concentrated aquatic animal production industry as one of those 11 categories. The revised consent decree requires EPA to sign a proposed rule by August 14, 2002, and to take final action by June 30, 2004. This rule is the last of the 19



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

To subscribe to WATER LOG free of charge, contact: Mississippi-Alabama Sea Grant Legal Program, 262 Kinard Hall, Wing E, P. O. Box 1848, University, MS, 38677-1848, phone: (662) 915-7775, or contact us via e-mail at: waterlog@olemiss.edu. We welcome suggestions for topics you would like to see covered in WATER LOG.

Editor: Josh Clemons, M.S., J.D.

Publication Design: Waurene Roberson

For information about the Legal Program's research, ocean and coastal law, and issues of WATER LOG, visit our homepage at <http://www.olemiss.edu/orgs/SGLC>

Publication Announcement *Interstate Water Disputes: A Road Map for States*

The Mississippi-Alabama Sea Grant Legal Program is pleased to announce the publication of *Interstate Water Disputes: A Road Map for States* authored by Josh Clemons, Water Log editor and Research Counsel of the Mississippi-Alabama Sea Grant Legal Program. The publication, which first appeared in the *Southeastern Environmental Law Journal*, is available in hard copy and online at:

<http://www.olemiss.edu/orgs/SGLC/acf.htm>

categorical rules to be issued and completes EPA's obligation under the 1992 consent decree.

To which facilities does this rule apply?

The final rule applies to direct discharges of wastewater from these existing and new facilities:

- Facilities that produce at least 100,000 pounds a year in flow-through and recirculating systems that discharge wastewater at least 30 days a year (used primarily to raise trout, salmon, hybrid striped bass and tilapia).
- Facilities that produce at least 100,000 pounds a year in net pens or submerged cage systems (used primarily to raise salmon).

What are the impacts of the regulation?

We expect that, when the rule is implemented through NPDES permits, the discharge of total suspended solids will be reduced by more than 500,000 pounds per year, and the discharge of biochemical oxygen demand and nutrients will be reduced by about 300,000 pounds per year. The resulting improvements in water quality will create more opportunities for swimming and fishing and reduce stress on ecosystems in those waters. We estimate it will cost about \$1.4 million a year for the facilities to comply with this rule, and our analyses indicate that they can afford these costs.

What does the rule require?

The rule requires that all applicable facilities:

- Prevent discharge of drugs and pesticides that have been spilled and minimize discharges of excess feed.
- Regularly maintain production and wastewater treatment systems.
- Keep records on numbers and weights of animals, amounts of feed, and frequency of cleaning, inspections, maintenance, and repairs.
- Train staff to prevent and respond to spills and to properly operate and maintain production and wastewater treatment systems.
- Report the use of experimental animal drugs or drugs that are not used in accordance with label requirements.
- Report failure of or damage to a containment system.
- Develop, maintain, and certify a Best Management Practice plan that describes how the facility will meet the

requirements.

The rule requires flow through and recirculating discharge facilities to minimize the discharge of solids such as uneaten feed, settled solids, and animal carcasses.

The rule requires open water system facilities to:

- Use active feed monitoring and management strategies to allow only the least possible uneaten feed to accumulate beneath the nets.
- Properly dispose of feed bags, packaging materials, waste rope, and netting.
- Limit as much as possible wastewater discharges resulting from the transport or harvest of the animals.
- Prevent the discharge of dead animals in the wastewater.

How can I get copies of the rule or additional information?

You can get a copy of the final rule by contacting the Office of Water Resource center at 202-566-1729 or by sending them an e-mail at center.water-resource@epa.gov. You can also write or call the National Service Center for Environmental Publications (NSCEP), U.S. EPA/NSCEP, P.O. Box 42419, Cincinnati, Ohio 45242-2419, (800) 490-9198, www.epa.gov/ncep/ihom/. You can get electronic copies of the preamble, rule, and major supporting documents at www.epa.gov/guide/aquaculture or in E-Docket at www.epa.gov/edocket/. Once in the E-Docket system, select "search," then key in the docket identification number (OW-2002-0026). For additional information, contact Ms. Marta Jordan at (202) 566-1049 or jordan.marta@epa.gov. ✓

Photo of plastic circular aquaculture tanks and greenhouses used for aquaculture courtesy of NOAA Fisheries Collection. Photographer: Eileen McVey.



Mississippi Court Reverses Itself on Wetland Permit *Sends Browns' Case Back to Agency*

Miss. Dept. of Marine Resources v. Brown, No. 2002-SA-01404-COA, 2004 WL 1157559 (Miss. App. May 25, 2004)

Josh Clemons

The previous issue of *Water Log* featured a story about a decision by the Court of Appeals of Mississippi in the case of Sydney and Stephanna Brown and their quest to obtain a wetland fill permit.¹ Since that issue went to press, a full panel of the court reheard the case and reversed the three-judge panel's earlier decision.

Background

The Browns own a boat launch and bait shop facility in Jackson County, Mississippi, the state's easternmost coastal county. In 1999, seeking to expand their business, they applied to the Mississippi Department of Marine Resources (DMR) for permission to fill 1.64 acres of wetland for erosion control, an on-site bait camp, and a parking lot. The Browns also sought permission to add two hundred feet to their existing pier.

The permitting process required the Browns to submit a mitigation proposal, cross-sections of the site, and \$450 in fees. In response to DMR's request for additional information, the Browns also hired a consultant to perform an environmental assessment. Scientists and others from DMR inspected the site, and the agency received input from the public and other interested parties as well. Information in hand, DMR wrote a report to the Commission on Marine Resources (the body that makes the permitting decisions) in which it recommended denial of the permit. In addition, the Commission held a hearing for arguments for and against the wetland fill.

The Commission determined that there was no need for additional boat launch facilities, and that the Browns' commercial activity might harm nearby wildlife reserves. For these reasons, the Commission decided that allowing these wetlands to be filled would not serve a "higher public interest"² and that it was therefore required by law to deny the permit.

The Browns appealed the Commission's decision to the Chancery Court of Jackson County, which has the power to grant or deny the permit, or to remand the

application to the Commission.³ The chancery court reversed the Commission's denial on the grounds that, among other things, the record was "devoid of any findings of fact, feasibility study or inspection report of premises as required by the rules, statutes and regulations applicable to this type of proceeding."⁴ In other words, the Commission had failed to support its decision adequately as required by law.⁵

DMR appealed the chancery court decision to the Court of Appeals of Mississippi.⁶ A three-judge panel upheld the chancery court's decision.⁷ DMR moved for a rehearing by the full membership of the court (an "en banc" rehearing), and the court granted the motion.

The En Banc Court's Decision

On May 25 the court issued a reversal of its earlier decision. The court based its reversal on Miss. Code § 49-27-45, which provides:

[i]f, upon hearing [an appeal from a permitting decision], it appears to the [chancery] court that any testimony has been improperly excluded by the commission or that the facts disclosed by the record are insufficient for the equitable disposition of the appeal, it shall refer the case back to the commission to take such evidence as it may direct and report the same to the court with the commission's findings of fact and conclusions of law.

The court interpreted this statutory language as commanding the chancery court to send a permit denial back to the Commission once the court has found that the Commission's record is devoid of the required findings of fact. The chancery court, however, had simply reversed the Commission's decision instead. The court of appeals therefore reversed the chancery court, and sent the case back to the Commission so that it could collect and provide the information the chancery court needs.

The case's circuitous journey through the legal system is not necessarily at an end. The Browns can appeal this decision. *Water Log* will continue to follow the proceedings. ♡

Bankruptcy Court Interprets Pollution Law

No Private Right to Sue under State Statute

In re Moore, 310 B.R. 795 (Bankr. N.D. Miss. 2004)

Josh Clemons

The U.S. Bankruptcy Court for the Northern District of Mississippi, knee-deep in a dispute over noxious emissions from hog farms, was recently forced to determine whether the Mississippi Air and Water Pollution Control Law (MAWPCL)¹ provides a private cause of action to enjoin violations. The court found that the statute does not provide such a cause of action.

Background – A Nuisance Action

In early 2000 sixty-eight residents of north-central Mississippi's Montgomery County, fed up with the unsubtle bouquet and disturbingly zesty effluent emitted by the area's large-scale hog farms, sought pecuniary and olfactory relief in the Chancery Court of Montgomery County. The plaintiffs' ire was focused on North Carolina-based Prestage Farms, Inc., one of the nation's biggest hog producers and no stranger to defending its environmental policies in Mississippi courtrooms.² Prestage typically contracts with smaller hog farmers, who design, build, and operate their facilities in accordance with Prestage's specifications and sell their pigs to Prestage for marketing. This was the case in Mississippi. Seven of these contractors were named defendants alongside Prestage.

The farming operations in controversy were of the type in which animals are kept confined and fed a special diet for rapid growth. Ventilation fans pull fresh air inside and push not-so-fresh air outside. Of course, large numbers of confined pigs being fed a rapid-growth diet produce a predictable byproduct: pig excrement, and lots of it. The foul brown deluge is collected in open-air lagoons, where anaerobic bacteria break down the solids. The remaining liquid is sprayed for fertilizer on adjoining fields.

The plaintiffs alleged that the hog farming operations constituted private and public nuisances, and also that Prestage and the other hog farmers were intentionally inflicting emotional distress. A private nuisance is an unreasonable interference with another's use and enjoyment of his property.³ A public nuisance is an unreasonable interference with a right or interest com-

mon to the general public, such as breathing healthy air.⁴ "Intentional infliction of emotional distress" requires the defendant to engage in outrageous conduct that intentionally or recklessly causes emotional or mental distress.⁵ The plaintiffs sought damages (money) and injunctive relief (a court-ordered end to the offensive activities).

On to the Courtrooms

The case took various procedural twists and turns⁶ until one of the defendant farms filed Chapter 12 bankruptcy⁷ and the defendants removed the case to federal district court, which transferred the case to federal bankruptcy court. During the jurisdictional wrangling the other defendants, except Prestage, filed for Chapter 12 as well. The plaintiffs sought to have the case sent back to state court, but the bankruptcy court retained jurisdiction because there was a sufficient connection between the underlying action – the suit for damages and injunctive relief – and the bankruptcy action: an injunction would effectively shut down the defendants' farming operations and they would have nothing to reorganize.⁸

The defendants then tried to have the case dismissed based on Mississippi's "right to farm" statute, which provides farming operations (including hog farms) that have existed "substantially unchanged" for a year or more with an absolute defense to nuisance actions.⁹ Several of the defendant farms had installed incinerators for pig carcasses within the year before the suit. Because there was a question whether those farms had operated

Photograph of pig farm courtesy of the U.S. Department of Agriculture



See Moore, page 13

Fifth Circuit Rejects Platform Worker's LHWCA Claim

Or, a Pier is Not Always a Pier

Thibodeaux v. Grasso Prod. Management, Inc., 370 F.3d 486 (5th Cir. 2004)

Josh Clemons

On May 18 the U.S. Court of Appeals for the Fifth Circuit denied an oil platform worker's petition for review of an administrative decision denying him benefits under the Longshore and Harbor Workers' Compensation Act (LHWCA),¹ because the platform where he was injured is not a "pier" or "other adjoining area" within the meaning of the LHWCA.

Mr. Thibodeaux' Injury

Randall Thibodeaux worked for Grasso Production Management, Inc. as a pumper/gauger at one of its fixed oil and gas production platforms on Garden Island Bay, Louisiana. The platform upon which he worked was built over marsh and water, is accessible only by boat, and includes docking areas for the boats that carry Grasso employees, their belongings, and equipment to the platform. While inspecting a leaking oil discharge line below the platform, Thibodeaux fell into the marsh and impaled his hand on a nail.

Thibodeaux sought compensation under the LHWCA. The LHWCA provides a federal cause of action for compensation for maritime and harbor workers who are injured during the course of their employment, provided the worker is injured at a location, or "situs," that is covered by the statute.²

Thibodeaux' case was first heard by an administrative law judge (ALJ), who held that the injured platform worker was covered by the LHWCA. Thibodeaux' employer and its insurance carrier appealed the ALJ's decision to the U.S. Department of Labor's Benefits Review Board (Review Board), which determined that the oil production platform was not a covered situs under the LHWCA. Thibodeaux in turn appealed this adverse decision to the Fifth Circuit.

The Law, and the Court's Analysis

The pivotal section of the LHWCA is found at 33 U.S.C. § 903(a), and provides

[e]xcept as otherwise provided in this section, compensation shall be payable under this chapter in respect of disability or death of an employee, but only if the disability or death

Photograph courtesy of ©Nova Development Corp.



results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel).

The question before the court was whether the oil production platform was a “pier” or “other adjoining area” such that Thibodeaux’ injury would be compensable. The answer depended on whether the court chose to interpret those terms narrowly or broadly. Precedent existed for either interpretation.

In ruling for Thibodeaux, the ALJ had relied upon a broad interpretation first enunciated by the Ninth Circuit in *Hurston v. Dir., Office of Workers Comp. Programs*.³ The injury in *Hurston* occurred on an oil platform similar to that upon which Thibodeaux worked, but accessible from land. The *Hurston* court held that the oil platform was a “pier” within the meaning of the LHWCA because it looked like a pier, was built like a pier, and adjoined navigable waters. The court reasoned that it was unnecessary for the platform to have been “customarily used [for] loading, unloading, repairing, dismantling, or building a vessel” because there is no comma after “other adjoining area” in the statute. By this reasoning, *any* “pier, wharf, dry dock, terminal, building way, [or] marine railway” adjoining navigable water would be a covered situs regardless of its relationship to maritime vessels.

In overturning the ALJ’s decision, the Review Board followed the narrower “functional” interpretation announced by the Fifth Circuit in *Jacksonville Shipyards, Inc. v. Perdue*.⁴ In that case, the injured worker was required to prove that the situs of his injury served one of the functions listed in the statute – loading, unloading, etc. The court noted that Congress intended for the LHWCA to compensate maritime workers engaged in maritime work, and therefore Congress did not intend for the statute to cover injuries that occurred on structures not being used for maritime purposes. Thus, contrary to the *Hurston* reasoning, a pier must serve a maritime purpose to be a covered situs under the LHWCA.

The Fifth Circuit concluded that the restrictive *Jacksonville Shipyards* analysis has greater legal justification than the broad *Hurston* analysis, based on Congress’ intent when it enacted the LHWCA. The Supreme Court had rejected attempts to compensate

injuries occurring in navigable waters under state worker’s compensation laws, which meant that maritime workers regularly “walk[ed] in and out of coverage” of those laws.⁵ To rectify the situation, Congress used its maritime lawmaking authority to pass the LHWCA. The purpose, language, and structure of the statute indicated to the court that Congress intended § 903(a) to cover only structures with a connection to maritime commerce.

The court next examined whether the oil platform from which Thibodeaux fell had the necessary connection to maritime commerce. Relying on reasoning in Fifth Circuit and U.S. Supreme Court decisions to the effect that work on oil platforms is not intrinsically maritime work,⁶ the court determined that the oil platform in this case lacked the connection to maritime commerce necessary for LHWCA coverage. Following this reasoning, the court also held that the area where Thibodeaux was injured was not an “other adjoining area” under § 903(a) because an oil production platform “is normally not the site of significant maritime activity.”⁷

Conclusion

The Fifth Circuit denied Randall Thibodeaux’ petition to review the Review Board’s decision denying him compensation under the LHWCA, because the Board correctly found that Thibodeaux’ injury did not occur in an area covered by the statute. In doing so, the court reaffirmed the restrictive *Jacksonville Shipyards* rule requiring a covered situs under the LHWCA to serve a maritime purpose. ♡

ENDNOTES

1. 33 U.S.C. §§ 901-950.
2. *Thibodeaux v. Grasso Prod. Management, Inc.*, 370 F.3d 486, 488 (5th Cir. 2004).
3. 989 F.2d 1547 (9th Cir. 1993).
4. 539 F.2d 533, 541 (5th Cir. 1976), *overruled on other grounds, Texports Stevedore Co. v. Winchester*, 632 F.2d 504, 516 (5th Cir. 1980).
5. *Thibodeaux*, 370 F.3d at 492 (internal quotes and citations omitted).
6. *Munguia v. Chevron U.S.A. Inc.*, 999 F.2d 808 (5th Cir. 1993); *Herb’s Welding, Inc. v. Gray*, 470 U.S. 414 (1985). The courts in those cases focused on the nature of the work being performed, rather than on the nature of the structure upon which the work is performed.
7. *Thibodeaux*, 370 F.3d at 494.

Rip Currents, from page 1

The Tort of Negligence

If someone drowns because of a rip current, and his or her survivors decide to sue a beachfront landowner (such as the hotel at which the people who drowned were guests), their suit is most likely to be based on the tort of negligence. The tort of negligence has four elements, all of which must be present for a successful suit: (1) the defendant must have owed a duty of care to the plaintiff, (2) that duty must have been breached, (3) the plaintiff must have suffered an injury, and (4) the injury must have been caused by the defendant's breach of the duty of care. In sum, negligence = duty + breach + injury + causation.

The big question in landowner liability cases is usually duty of care. Did the landowner have a duty to the plaintiff, and if so, what was it? If there was no duty of care, then a negligence suit will be unsuccessful.

Beachfront Landowners' Duty of Care

Generally speaking, a landowner has a duty to non-trespassers on her land to either warn them of dangerous conditions on her land, or to make those conditions safe. However, a landowner generally does not have a duty to warn people on her land about dangerous conditions on adjacent property. The underlying common-sense principle is that she cannot be held liable for dangerous conditions on another's land because she did not create the conditions and has no control over them.

In most states, a beachfront landowner's property ends at the high tide line. Seaward of the high tide line is state or federal property (usually state). Rip currents, by necessity, occur on the public property seaward of the high tide line. Thus, by the general rule, adjacent upland landowners do not have a duty to warn people about them. Several court decisions have affirmed this general rule.

In *Swann v. Olivier*,⁴ a guest at a private beach party near San Clemente, California sued the host for injuries he sustained from hazards in the surf, including a rip current. The plaintiff asserted that the defendant landowner had a duty to warn him of those hazards. Relying on the principle that a landowner is generally not liable for injuries on property outside his ownership, possession, or control, the Court of Appeal for California held that the private beachfront landowner had no duty to warn the plaintiff. The court left open the possibility that private landowners might be found liable for injuries off their property if "(1) they imposed or created some palpable external effect on the area where the plaintiff was injured, or (2) they received a

special commercial benefit from the area of the injury plus had direct or de facto control of that area."⁵

The following year the California appeals court faced an almost identical case in which the private landowner was a hotel company, which clearly "received a special commercial benefit from the area." *Princess Hotels Int'l v. Superior Court*⁶ concerned a couple who went for a late-night swim in the ocean in front of their hotel. They were caught in a rip current; the man drowned, and the woman was injured. She and the man's estate sued the hotel for failing to warn adequately of the danger (the hotel had posted "swim at your own risk" signs, but the woman denied seeing them). The court followed *Swann* and ruled that the hotel owed no duty to warn, even though it received commercial benefit from the area, because it had no control over the ocean.

The highest state court in New York has ruled similarly in a case in which the estate of a hotel guest who drowned in a rip current sued the hotel for negligence.⁷ The hotel was separated from the beach by a highway, but the hotel encouraged use of the beach by its guests and provided them with chairs, towels, umbrellas, and even a security escort service. The hotel also distributed pamphlets warning of various dangers including sunburn and crime on the beach. The plaintiff charged that the hotel knew or should have known of the rip current danger, and breached its duty to warn its guests. The court disagreed, holding that the hotel had no duty to warn because the rip currents occurred in an area over which it exercised no management, supervision, or oversight, even though it encouraged beach use. The court also held that the hotel had no duty to investigate and discover dangerous conditions of the bathing area.

Closer to home (but not in the Gulf), a Florida court, ruling in a case brought against a hotel by the estates of the victims of a double drowning in a rip current off Miami Beach, held that "an entity which does not control the area or undertake a particular responsibility to do so has no common law duty to warn, correct, or safeguard others from naturally occurring, even if hidden, dangers common to the waters in which they are found."⁸ The court noted that a duty of care *might* arise if the hotel or other business rented some kind of water craft for use in the surf where rip currents occur.

One judge in the Florida case wrote a brief dissent, in which he raised the possibility that the common law duty of innkeepers to protect their guests against unreasonable risks of physical harm might be implicated.⁹ While this duty is commonly recognized, it is not typi-

cally considered to apply when guests are away from the premises.¹⁰ In such situations the analysis usually focuses on land ownership and the general rule against liability for injuries on another's land is applied.

An unusual case from California, *Pacheco v. U.S.*,¹¹ merits attention because it turned out differently than the ones described above. An eleven-year-old Kansas girl was caught in a rip current on a beach near Big Sur; her mother and grandmother jumped in to rescue her and all three were drowned. The girl's father sued the U.S. (the area was part of Los Padres National Forest) and the private company that operated the campground at which the family was staying, asserting that they breached their duty to warn.

The case would seem to be controlled by *Swann*, but a 2-1 majority of the court held that, if the particular facts of the case as alleged by the plaintiffs were true, the defendants may have breached a duty to warn. The court based this outcome on two principles: creation and control. First, the court reasoned that the defendants created the hazard by encouraging children to play in the water, which it did by handing out perforated toy buckets and failing to warn of the dangers to children of playing in the surf. Second, the defendants were said to have "created an open public display of their control of the area" by maintaining paths, posting signs, and promulgating and enforcing rules governing usage of the beach.¹² These elements of creation of the danger and control of the beach were sufficient to create a duty to warn of the rip current danger. This duty, the court observed, could have been satisfied by posting signs or distributing information.

The *Pacheco* case should probably be considered an anomaly because of its peculiar reasoning. The *Swann* case exhibits the conventional reasoning with respect to creating an off-premises hazard. There, the "hazard" was the rip current itself, which, of course, the defen-

dant did not create. In *Pacheco* the court implies that the "hazard" is the appearance that playing in the surf is safe, which the defendant supposedly did create.

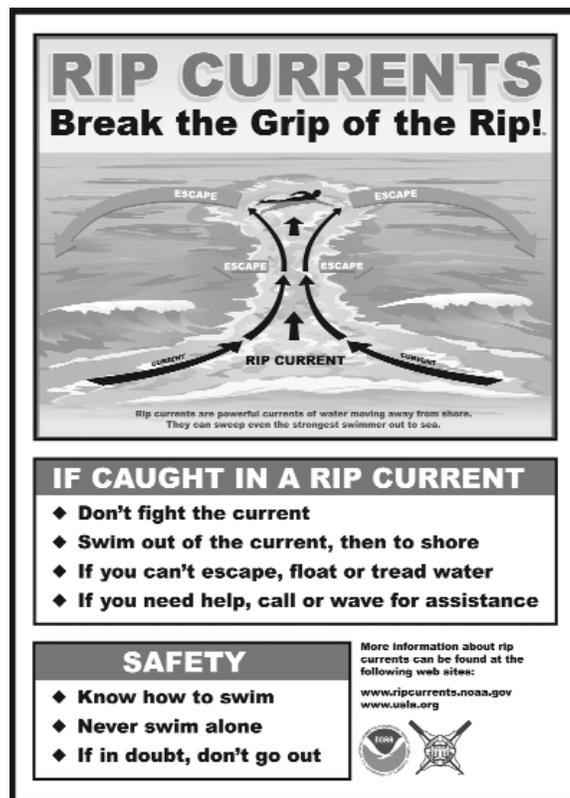
The court similarly tinkered with the "control" analysis. In *Swann*, the court found it highly doubtful that anyone could control the "sledge hammering seas" and "inscrutable tides of God."¹³ That is, the thing not "controlled" was the rip current itself. In *Pacheco*, the thing "controlled" was the entire beachfront area. The *Pacheco* dissenter pointed out that the court's analysis was contrary to the controlling precedent of *Swann*. Had the *Pacheco* analysis been employed in *Swann*, the result of that case would have been completely different. It is probably safe to say that the weight of authority is on the side of *Swann*, and that a beachfront landowner generally has no duty to warn of rip currents. The possibility of a contrary holding should be kept in mind, however.

Despite its unusual result, *Pacheco* provides an important take-home message: posting or distributing warnings should satisfy the duty to warn, if one exists. From a liability standpoint, the safest course for a beachfront landowner may be to warn guests of the dangers of rip currents. That way the landowner is likely to be covered whether or not a court finds there was a duty to warn. Better yet, good warnings may prevent rip current accidents from happening at all.¹⁴

State Landowner Liability

The state usually owns the land seaward of the high tide line, which is the property on which rip currents occur. Thus it is logical to suppose that the state could be sued for failure to warn of rip currents. The state, however, enjoys sovereign immunity from suit by citizens, which means that the only way one can sue the state is if the state consents to the suit.

Many states have consented to waive their sovereign immunity to suit for torts like negligence in certain situations. A state usually waives its immunity in a statute called a Tort Claims Act.¹⁵ A Tort Claims Act typically



Rip Currents sign courtesy of NOAA

Rip Currents, from page 9

allows citizens to sue the state for torts committed by its agencies and employees acting in the course of their employment. Negligently failing to warn of a rip current could, in theory, be the basis for such a suit.

The suit would likely be unsuccessful, however. Most Tort Claims Acts include a big exception: the *discretionary duty* exception.¹⁶ Under this exception, the state retains its sovereign immunity for torts committed by its agencies or employees in the course of carrying out discretionary duties or functions. A function or duty is discretionary if it involves an element of judgment or choice; a duty that is proscribed by statute, regulation, or policy is not considered discretionary.¹⁷ A general and accurate statement about whether posting warning signs for rip currents is a “discretionary function” cannot be made, because the facts and law may vary so widely from state to state. Each state must carefully examine its unique situation to determine the best course of action.

“Will Posting or Distributing Rip Current Warnings Increase My Liability?”

Beachfront landowners sometimes think that posting signs or distributing information warning of dangers in the ocean may somehow increase their liability if someone is injured. This belief is not supported by the law, which reflects the sound public policy favoring protection of public safety by warning of dangers. Research on this topic uncovered no cases in which a landowner was found to be liable for injuries occurring on adjacent property because he warned of dangers on that property. If there is a duty to warn (which is unlikely, as discussed in the *Pacheco* case above), then warning will satisfy the duty and there will be no liability. If there is no duty to warn, then there can be no liability for negligence at all. Posting or distributing warnings would simply be “going the extra mile,” safety-wise.¹⁸

Conclusion

For beachfront landowners there is generally no liability for rip current injuries because the landowner neither creates the danger nor controls the property on which the danger occurs. Therefore, the beachfront landowner is not obligated to warn of dangers in the ocean. Nonetheless, a beachfront landowner should not be discouraged from warning visitors about rip currents by fear of increased liability. Raising awareness of rip currents is one way to “Break the Grip of the Rip.” ✓

FOR MORE INFORMATION:
<http://www.ripcurrents.noaa.gov>

ENDNOTES

1. The information in this article was presented in different form at a June 24, 2004 workshop on rip currents at Gulf Shores State Park, Alabama, sponsored by the Mississippi-Alabama Sea Grant Consortium.
2. Nat'l Oceanic and Atmospheric Admin., Nat'l Weather Serv., Office of Climate, Water, and Weather Servs., *Rip Currents: Break the Grip of the Rip* <<http://www.ripcurrents.noaa.gov/>>.
3. For more information on this effort, please visit <<http://www.ripcurrents.noaa.gov/>>.
4. 28 Cal. Rptr. 2d 23 (Cal. App. 1994).
5. *Id.* at 26.
6. 39 Cal. Rptr. 2d 457 (Cal. App. 1995).
7. *Darby v. Compagnie Nat'l Air France*, 753 N.E.2d 160 (N.Y. 2001). The hotel was actually located in Brazil, but for reasons beyond the scope of this article the case was decided in New York under New York law. The surf area was government property, as in the U.S.
8. *Poleyeff v. Seville Beach Hotel Corp.*, 782 So. 2d 422, 424 (Fla. App. 2001).
9. *See* Restatement (Second) of Torts § 314A (2004) (stating rule).
10. *Id.* cmt. c.
11. 220 F.3d 1126 (9th Cir. 2000).
12. *Id.* at 1132 (emphasis added).
13. 28 Cal. Rptr. 2d at 28 (quoting *Moby Dick*).
14. Warning signs and brochures may be downloaded at <<http://www.ripcurrents.noaa.gov/graphics.shtml>>.
15. *E.g.*, Miss. Code § 11-46-5 (Mississippi Tort Claims Act).
16. *E.g.*, Miss. Code § 11-46-9(d).
17. *See generally* Jean F. Rydstrom, Annotation, *Claims Based on Construction and Maintenance of Public Property as within Provision of 28 U.S.C.A. § 2680(A) Excepting from Federal Tort Claims Act Claims Involving “Discretionary Function or Duty,”* 37 A.L.R. Fed. 537 (discussing discretionary duty exception to Federal Tort Claims Act, which is similar to most state Tort Claims Acts).
18. Of course, one must warn in a non-negligent manner; that is, as a reasonable person exercising ordinary care would do under the circumstances. This standard is not a difficult one to meet.

RIP CURRENTS
Break the Grip of the Rip!

Bluewater, from page 1

The Clean Air Act's Requirements

Sec. 213 of the CAA requires EPA to study emissions from “nonroad engines and nonroad vehicles” to discover whether such emissions cause or significantly contribute to air pollution that endangers the public health or welfare.¹ EPA must then determine whether emissions of certain pollutants from new and existing nonroad engines and vehicles are significantly contributing to ozone and carbon monoxide concentrations in areas that are already failing to meet national air quality standards for those two pollutants.² If they are, then EPA must promulgate emissions standards for new nonroad engines and vehicles that cause or contribute to the problem.³ The standards must

achieve the greatest degree of emission reduction achievable through the application of technology which [EPA] determines will be available for the engines or vehicles to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology.⁴

The CAA also requires the emissions standards to “take effect at the earliest possible date considering the lead time necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period and energy and safety.”⁵

Creation of the Rule

After determining in 1994 that nonroad engines and vehicles were significantly contributing to ozone and carbon monoxide problem areas, EPA began the rule-making process to set emissions standards for “Category 3” marine diesel engines. These mighty maritime workhorses, which propel large vessels like cruise ships, tankers, and container ships, have per-cylinder displacements of over thirty liters.⁶ They burn a relatively low-grade fuel of variable quality that makes their emissions difficult to control. Category 3 engines had previously been unregulated.⁷

Around the same time, the International Marine Organization (IMO) undertook regulation of these engines. This effort culminated in Annex VI to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the



Photograph courtesy of ©Nova Development Corp.

Protocol of 1978 relating thereto (MARPOL). Annex VI, which goes into effect in 2005, will “set limits on sulphur oxide and nitrogen oxide emissions from ship exhausts and prohibit deliberate emissions of ozone depleting substances.”⁸

In its final rule for Category 3 engines EPA adopted the Annex VI emissions controls as its “near term Tier 1” standard. The Tier 1 standard, which took effect on January 1, 2004, would at first apply only to U.S.-flagged vessels. Manufacturers would be able to meet Tier 1 standards with older control technologies, but would not be forced to implement “advanced” technologies.⁹ Under the final rule, more stringent Tier 2 standards are to be established by April 27, 2007, and could apply to foreign-flagged vessels in U.S. waters. The Tier 2 standards are to be set in a future rulemaking.

EPA’s justification for this two-step process was pragmatic. Although Annex VI standards were not the *greatest* achievable with existing control technologies, which include the “advanced” technologies, they could at least be met right away, and manufacturers were in fact already complying. Stricter standards would have required additional research into and development of existing technologies, and thus more lead time. EPA also believed that the two-step process would result in greater emissions reductions over the long term, while also bringing short-term benefits.

Bluewater Network’s Lawsuit

Bluewater Network (Bluewater) is a San Francisco-based environmental organization that advocates for, among other things, reduction of pollution from marine engines.¹⁰ Bluewater petitioned the D.C. Circuit for review of the EPA final rule, bringing two claims: (1) that EPA’s failure to adopt emissions standards that would achieve the greatest degree of emission reduction with available control technologies was arbitrary and capricious in violation of the Administrative Procedure Act,¹¹ and (2) that EPA violated the CAA by postponing regulation of foreign-flagged vessels.

DMR, from page 4

ENDNOTES

1. Josh Clemons, *Mississippi Appeals Court Okays Wetland Fill*, WATER LOG, vol. 24, no. 1, at 8 (2004).
2. Miss. Code § 49-27-3 (“It is declared to be the public policy of this state to favor the preservation of the natural state of the coastal wetlands and their ecosystems and to prevent the despoliation and destruction of them, except where a specific alteration of specific coastal wetlands would serve a higher public interest in compliance with the public purposes of the public trust in which coastal wetlands are held”).
3. *Id.* § 49-27-47.
4. *Miss. Dept. of Marine Resources v. Brown*, No. 2002-SA-01404-COA, 2004 WL 1157559, at *3 (Miss. App. May 25, 2004).
5. *See* Miss. Code § 49-27-35.
6. The Court of Appeals decides cases assigned to it by the Mississippi Supreme Court. Miss. Code § 9-4-3.
7. *Mississippi Dept. of Marine Resources v. Brown*, No. 2002-SA-01404-COA, 2003 WL 22952806 (Miss. App. Dec. 16, 2003).

Bluewater, from page 11

Bluewater’s first claim is based on the CAA’s “technology-forcing” character; the idea is that EPA must set the strictest standards that can possibly be met with existing technologies, including “advanced” technologies that may not be in widespread use. Bluewater’s second claim centers on the CAA term “new nonroad engine.” Bluewater argued that the statute did not exclude from that category foreign-flagged vessel engines, so they should be included. Alternatively, the group argued that postponing regulation of foreign-flagged vessels until 2007 was arbitrary and capricious.

The Court’s Rejection of Bluewater’s Claims

The court rejected both of Bluewater’s claims. First, the court held that EPA’s two-step approach, which makes do with the application of readily available technology instead of forcing improvements, was a reasonable interpretation of the CAA because the statute intends for the agency to consider factors such as “cost, lead time, safety, noise and energy” when setting emissions standards.¹² According to the court, the two-step process is a valid “anti-backsliding” measure; in other words, it will prevent pollution from getting worse, and that is all the statute demands.¹³ The court dismissed Bluewater’s second claim on the ground that EPA legitimately found the term “new nonroad engine” to be ambiguous, and that EPA did not act arbitrarily or capriciously in determining that the engines of foreign-flagged vessels are outside this ambiguous category. Because EPA’s determination was valid, immediate regulation accordingly was not mandatory. EPA further concluded that postponing the standards would not result in significant emissions increases before 2007; therefore, the court held, it was not arbitrary or capricious for EPA to postpone setting emission standards for foreign-flagged vessels until 2007.

Conclusion

Bluewater Network’s petition for review of the EPA’s final rule on Category 3 marine diesel engine emissions was denied by the D.C. Circuit Court of Appeals. The rule, which went into effect on April 29, 2003, remains in force as written. ✓

ENDNOTES

1. 42 U.S.C. § 7547(a)(1).
2. *Id.* § 7547(a)(2).
3. *Id.* § 7547(a)(3).
4. *Id.*
5. *Id.* § 7547(b).
6. By comparison, the road-wrinkling Dodge Viper’s five-hundred-horsepower V-10 engine displaces a comparatively puny 8.3 liters.
7. *Control of Air Pollution; Emission Standards for New Gasoline Spark-Ignition and Diesel Compression-Ignition Marine Engines*, 59 Fed. Reg. 55,930 (Nov. 9, 1994).
8. International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78) (available at <http://www.imo.org/Conventions/-contents.asp?doc_id=678&topic_id=258>).
9. The older technologies include turbocharging, supercharging, and improvements in fuel injection and engine cooling. “Advanced” technologies include selective catalytic reduction and water injection.
10. *See* <<http://bluewaternetwork.org/aboutus.shtml>>.
11. 42 U.S.C. § 7607(d)(9)(A).
12. *Bluewater Network v. EPA*, No. 03-1120 at 12 (D.C. Cir. June 22, 2004).
13. *Id.* at 13.

Moore, from page 5

“substantially unchanged” for a year or more, the claims against those operations were kept alive.¹⁰

Another provision of the “right to farm” statute caught the plaintiffs’ attention. The penultimate paragraph provides that the statute does not “affect any provision of the ‘Mississippi Air and Water Pollution Control Law.’”¹¹ Thus, if the plaintiffs had a valid claim under MAWPCL, the “right to farm”

statute would not bar that claim no matter how long the facility had been in operation, and the defendants who had not installed incinerators would stay in the suit. The plaintiffs therefore argued that the defendants were violating MAWPCL, and that their violations constituted a public nuisance. This assertion raised a question that had not previously been answered in any court: whether MAWPCL provides a private cause of action.

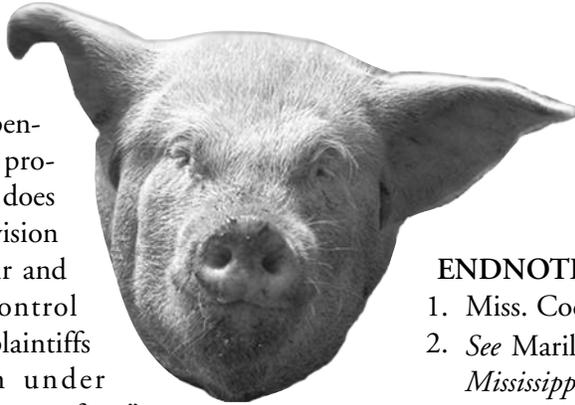
If a statute does not expressly provide a private cause of action, as MAWPCL does not, then the court must determine whether it was the legislature’s intention that one be created. The legislature may imply its intent to create a private cause of action by providing in the statute for a private remedy.

The court found that MAWPCL vests enforcement authority in the Mississippi Department of Environmental Quality (MDEQ), and that violations are subject to civil penalties. The statute allows a private party to ask MDEQ to call a hearing for the purpose of taking action in response to a violation, after which MDEQ may investigate and take such action “as it may deem appropriate.”¹² However, the court did not judge this to be a private remedy. Having found that MAWPCL includes neither an express provision for a private cause of action nor a provision for a private remedy, the court concluded that a private party cannot sue for a violation of the statute.

Conclusion

The court ruled that the plaintiffs were unable to sustain an action based on MAWPCL. The claims against defendants who had not installed pig carcass incinerators, and whose farms thus operated “substantially unchanged” for a year or more, were dismissed in accor-

dance with the “right to farm” law. The claims against the farms that had installed incinerators were kept alive but not decided in this opinion. ✓



Photograph courtesy of ©Nova Development Corp.

ENDNOTES

1. Miss. Code §§ 49-17-1 to 49-17-43.
2. See Marilyn Berlin Snell, *PROFILE: Downwind in Mississippi*, Sierra Magazine (March/April 2001) (available at < <http://www.sierraclub.org/sierra/200103/profile.asp>>); Jon Vansickle, *Litigations Reach the Farm*, National Hog Farmer (May 1, 2000) (available at <http://nationalhogfarmer.com/mag/farming_litigations_reach_farm/>).
3. *Williams v. King*, 860 So.2d 847, 851 (Miss. App. 2003).
4. *Comet Delta, Inc. v. Pate Stevedore of Pascagoula, Inc.*, 521 So.2d 857, 860-61 (Miss. 1988).
5. *Donald v. Amoco Production Co.*, 735 So.2d 161, 178-79 (Miss. 1999).
6. See *Prestage Farms, Inc. v. Norman*, 813 So.2d 732 (Miss. 2002) (upholding trial court’s refusal to sever claims and use of an equitable bill of peace for joinder of parties).
7. Chapter 12 allows “family farmers” to reorganize under terms better suited to their situation than Chapters 11 or 13. See Findlaw.com, *An Overview of Chapter 12 Bankruptcy – Family Farmers* (available at <http://print.bankruptcy.findlaw.com/bankruptcy/bankruptcy_overview/bankruptcy_overview_chapter_12.html>).
8. *In re Moore*, 2003 WL 22890106 (Bankr. N.D. Miss. 2003).
9. Miss. Code § 95-3-29. “Right to farm” statutes arose to protect agricultural operations from the increasing number of nuisance suits that accompanied expansion of urban development into agricultural areas. See Farm Foundation, *Right to Farm Laws: History and Future* (available at < <http://www.farmfoundation.org/1998NPPEC/hipp.pdf>>).
10. *In re Moore*, 306 B.R. 849 (Bankr. N.D. Miss. 2004).
11. Miss. Code § 95-3-29(3).
12. *Id.* § 49-17-35.



2004 ALABAMA LEGISLATIVE UPDATE



Josh Clemons

The following is a summary of coastal, marine, environmental, and water resources-related legislation enacted by the Alabama Legislature during the 2004 session.

2004 Alabama Laws 245

(H.B. 116)

Approved April 13, 2004

Effective October 1, 2004

Provides for local tax abatement for brownfield development properties that are voluntarily cleaned up pursuant to Chapter 30E of Title 22, Code of Alabama 1975, the Alabama Land Recycling and Economic Redevelopment Act.

2004 Alabama Laws 301

(H.B. 267)

Approved April 20, 2004

Effective upon adoption of constitutional amendment

Provides for, among other things: the promotion of the production, marketing, use, and sale of shrimp and seafood and their products; a means by which shrimpers and seafood fishermen, either singularly or jointly, may organize and by referendum levy upon themselves assessments for the purpose of financing promotion programs; and a means of collecting, disbursing, and expending any assessments. The act will not become effective until a constitutional amendment is adopted that authorizes the Legislature to provide for the promotion of shrimp and seafood. 2004 Alabama Laws 258, approved April 20, 2004, is the proposed constitutional amendment.

2004 Alabama Laws 392

(H.B. 751)

Approved May 4, 2004

Effective upon adoption of constitutional amendment

Proposes amendment to the Constitution of Alabama of 1901, relating to Conecuh County, to authorize the establishment of the Conecuh County Reservoir Management Area Authority for the development of Murder Creek in Conecuh County.

2004 Alabama Laws 635

(H.B. 815)

Approved May 17, 2004

Effective July 1, 2004

Levies temporary oil and gas privilege tax upon all persons engaged or continuing to engage in the business of producing or severing oil or gas from the soil or waters, or from beneath the soil or waters, of the state for sale, transport, storage, profit or for use. The tax terminates on July 1, 2005.

2004 Alabama Laws 85

(S.B. 117)

Approved April 1, 2004

Effective upon passage and approval

Continues the existence and functioning of the State Pilotage Commission until October 1, 2006.

2004 Alabama Laws 449

(S.B. 221)

Approved May 5, 2004

Effective August 1, 2004

Among other things, amends sections of Alabama Code governing fishing licenses and permits to: provide that U.S. military personnel stationed in Alabama on active duty are deemed residents; prohibit providing false information to obtain licenses; specify that fishing licenses and permits are not transferable; prohibit the borrowing, lending, or altering of licenses and permits; provide criminal penalties; and authorize residents of Alabama on leave from active military duty to fish without a license.

2004 Alabama Laws 526

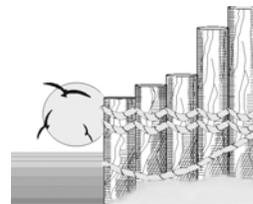
(S.B. 375)

Approved May 6, 2004

Effective upon passage and approval

Prescribes penalties for knowingly offering for direct retail sale for human consumption any shellfish, wild fish, or farm-raised fish that has been processed with chloramphenicol, nitrofurans, or similar veterinary drugs used in processing some imported seafood and banned by the United States Food and Drug Administration. ✓

Lagniappe *(a little something extra)*



Around the Gulf . . .

On June 30 the City of Orange Beach, Alabama, purchased **Robinson Island** for \$3.46 million to protect it from development. The island, site of a blue heron rookery, may become part of the Bon Secour National Wildlife Refuge or the state park system. Either way, it is anticipated to provide educational and recreational value to area citizens.

This spring the Mississippi Legislature wrested control over **offshore oil and gas leasing** from the Mississippi Department of Environmental Quality and granted it to the Mississippi Development Authority. The move, cheered by the oil industry but booed by many in South Mississippi, is anticipated to lead to more drilling off the state's coast. For environmental protection, drilling will be prohibited in most nearshore areas in the Mississippi Sound.

The State of Louisiana continues to dispute a jury award of **\$1.3 billion to oyster fishers** whose leased oyster beds in Breton Sound were damaged by a state freshwater diversion project on the Mississippi River. The Caernarvon diversion project was intended to help restore the Bayou State's rapidly eroding coastline. A Plaquemines Parish jury awarded the fishers \$21,345 an acre for their \$2-an-acre-a-year leases. The Louisiana Supreme Court has yet to rule.

Mississippi developer Robert Lucas, his daughter, and a co-worker are on trial for **criminal violations of the Clean Water Act** at their 2,600-acre Big Hill Acres development in Vancleave. The defendants bought up wetland property and developed it with septic systems that later polluted the area's shallow groundwater, in violation of state and federal law. Lucas and his associates have also been sued by Big Hill Acre residents, who have endured contaminated water and sewage in their yards.

On July 15 the Gulf of Mexico Fishery Management Council made effective a **new grouper regulation** that bans commercial catch of shallow-water grouper once the limit for the year has been caught. The common red grouper is included in the ban, which was enacted in response to increased pressure on grouper stocks. Grouper consumption has risen markedly in recent years as seafood lovers have discovered what this writer has long known: for good eating, it's tough to beat a hefty slab of tender, flaky Gulf grouper. The regulation is posted on the Council's website at <<http://www.gulfcouncil.org/fishrules.htm>>.

The Alabama Department of Environmental Management (ADEM), the state's official **environmental watchdog**, has recently come under fire for **sleeping on the job**. The agency's alleged shortcomings have included unabated sewage leaks, poor enforcement at livestock feedlots, and lax oversight at landfills. ADEM's biggest public-relations headache is probably the hazardous waste-packed Mobile Tank Wash facility. For over three years the agency failed to take action on the site where storage containers, "some as large as a mobile home filled to the rim with black goo," were abandoned by the facility's owner. The U.S. Environmental Protection Agency happened upon the site, which is located in a low-income area, in October 2003 and has begun a \$1.7 million cleanup. The good news is that the commission that oversees ADEM has begun to implement its new Final Strategic Plan, which states that ADEM's vision is "[t]o be the premier state environmental agency in the United States in balancing the protection of Alabama's environment and the health of all its citizens with the productive use of Alabama's valuable natural resources." Time will tell. The Final Strategic Plan may be viewed at <<http://www.adem.state.al.us/Final%20Strategic%20Plant.pdf>>.



Around the country . . .



U.S. EPA's Office of Water is making available second-year data from its National Study of Chemical Residues in Lake Fish Tissue, a four-year study designed to assess the condition of lakes and reservoirs in the forty-eight conterminous states. 268 chemicals are being tracked, including mercury, arsenic, PCBs, and various pesticides. The data may be accessed at <<http://www.epa.gov/waterscience/fishstudy/results.htm>>. ♡

WATER LOG (ISSN 1097-0649) is supported by the National Sea Grant College Program of the U.S. Department of Commerce's National Oceanic and Atmospheric Administration under NOAA Grant Number NA16RG2258, the Mississippi-Alabama Sea Grant Consortium, State of Mississippi, Mississippi Law Research Institute, and University of Mississippi Law Center. The views expressed herein do not necessarily reflect the views of any of those organizations. The U.S. Government and the Mississippi-Alabama Sea Grant Consortium are authorized to produce and distribute reprints notwithstanding any copyright notation that may appear hereon. Graphics and/or photographs by ©Corel Gallery, © Nova Development Corp., Mississippi Secretary of State, and NOAA.



The University complies with all applicable laws regarding affirmative action and equal opportunity in all its activities and programs and does not discriminate against anyone protected by law because of age, creed, color, national origin, race, religion, sex, disability, veteran or other status.

MASGP-04-009-02

*This publication is printed on recycled paper.
July, 2004*

Upcoming Conferences

•AUGUST 2004 •

The Gathering: Leopold's Legacy for Fisheries (AFS)
August 22-26, 2004, Madison, WI

<http://www.afs2004madison.org/>

Society for Ecological Restoration Annual Conference
Aug 25-27, 2004, Victoria, BC, Canada

<http://www.ser.org/meeting.php?pg=annualconference>

• SEPTEMBER 2004 •

5th Biannual Marine Law Symposium
September 9-11, 2004, Bristol, RI

<http://law.rwu.edu/About+the+School/News+and+Events/>

2nd National Conference on Coastal & Estuarine Habitat Restoration
September 12-15, 2004, Seattle, WA

<http://www.estuaries.org/>

13th International Conference on Aquatic Invasive Species
September 19-23, County Clare, Ireland

<http://www.aquatic-invasive-species-conference.org/>

23rd Annual Int'l Submerged Lands Management Conference
September 19-24, Nova Scotia, Canada

<http://www.gov.ns.ca/natr/land/slmc/>

2004 Combined DP Conference & MTS Symposium
September 28-30, 2004, Houston, TX

http://dynamic-positioning.com/next_conference.html



WATER LOG

Mississippi-Alabama Sea Grant Legal Program
Kinard Hall, Wing E, Room 262
P.O. Box 1848
University, MS 38677-1848

