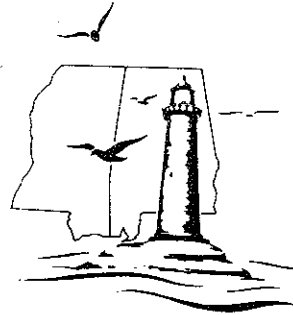


WATER LOG

***A Legal Reporter of the
Mississippi-Alabama Sea Grant Consortium***



ARTICLES

Citizen Suits Under the Federal Water Pollution Control Act: Split
Among the Circuits

New Mississippi Legislation on Natural Resource Use

Briefs: *Exxon v. Fischer*, *International Paper Co. v. Ouellette*

Index: 1981-1986

Vol. 7, No. 1

Coastal and Marine Law Research Program Jan.-March 1987

MASGP-87-012-1

CITIZEN SUITS UNDER THE FEDERAL WATER POLLUTION CONTROL ACT: SPLIT AMONG THE CIRCUITS

Introduction

Water pollution has long been a major environmental problem in the United States. In recognition of this, Congress enacted the Federal Water Pollution Control Act (FWPCA) in order to reduce water pollution to acceptable levels. 33 U.S.C.A. §§1251 *et seq.* (West 1986). Most of the responsibility for enforcing the FWPCA lies with the Environmental Protection Agency and the respective states. But it also allows for citizens to maintain lawsuits against alleged violators when neither the EPA nor the states have instituted proper action. Section 505 of the Act provides that, subject to certain limitations, a citizen may commence a civil action "against any person . . . who is alleged to be in violation of (A) an effluent standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a limitation or standard . . ." 33 U.S.C.A. §1365 (a) (1). Differences of opinion have arisen as to how this section of the Act should be interpreted. The main controversy that has surfaced is whether a citizen suit may be maintained under the Act for purely past violations. This article reviews, in chronological order, three important recent decisions from three United States Circuit Courts of Appeal that address the issue.

Hamker v. Diamond Shamrock Chemical Co., 756 F.2d 392 (5th Cir. 1985)

In January of 1983 a pipeline owned and operated by the Diamond Shamrock Chemical Co. began to leak crude petroleum into a creek which flowed onto property owned by the Hamkers. By the time the leak was detected approximately 2400 barrels of the crude petroleum had discharged into the creek. Diamond Shamrock made attempts to clean up the spill, but the Hamkers alleged that these efforts were inadequate.

The Hamkers filed suit under §505 of the FWPCA in the United States District Court for the Northern District of Texas seeking injunctive relief to prevent future occurrences. In addition, they sought imposition of civil penalties and an award for the costs of litigation. The district court granted the defendant's motion to dismiss stating that the court lacked subject matter jurisdiction because: (1) the Act authorizes only prospective relief; (2) the statute does not permit citizen suits for past violations; (3) the statute does not allow for recovery of damages; and (4) the statute does not create an implied cause of action.

The U.S. Court of Appeals for the Fifth Circuit affirmed the dismissal. In reaching its decision, the court held that the language of §505 is clear; i.e., "alleged to be in violation of" means a violation occurring at the time the suit is filed. The court stated that even a liberal interpretation of the Hamker complaint would show only that there had been a past discharge from which there were continuing negative effects. It was decided that this did not amount to the defendant being "in violation" of the Act. The court rejected the

WATER LOG

The *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 the WATER LOG free of charge, please send your name and address to: Coastal and Marine Law Research Program, University of Mississippi Law Center, University, Mississippi 38677. We welcome suggestions for topics you would like to see covered in the WATER LOG.

This publication was prepared with financial assistance from the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Office of Sea Grant (under Grant Number NA85AA-D-SG005), the State of Mississippi, and the University of Mississippi Law Center.

Editor:

Casey Jarman

Writers:

Louis Alexander

P. Colleen Coffield

John Cosmich

University of Mississippi Law Center—University, MS 38677

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, handicap, veteran or other status.

MASGP-87-012-1

argument that §505's "to be in violation" language should be interpreted to mean "to have violated."

In reaching its decision the Fifth Circuit reasoned that authority to enforce the Act is concentrated in the EPA and the states, and that power granted to citizens is merely supplementary. The court felt that the Act is designed so that this power can be exercised only when proper authorities have not taken appropriate action and the defendant has not ceased violating the Act. The court also stated that to hold otherwise would place an unreasonable burden on federal district courts, thus undermining Congressional intent to limit that burden. This policy arises from a fear that if suits like this one were to be allowed in the federal forum, then all state damage claims of this type could be litigated in the federal courts. In support of this position the Fifth Circuit said that it is the nondiscretionary duty of the EPA to promulgate adequate regulations and not the duty of the courts to establish enforcement standards.

Chesapeake Bay Foundation, Inc. v. Gwaltney of Smithfield, Ltd., 791 F.2d 304 (4th Cir. 1986), cert. granted 102 S. Ct. 872.

This suit was filed as a citizen suit under §505 of the FWPCA by a regional environmental group against Gwaltney, a company engaged in the business of processing and packing pork products. The complaint alleged violations of pollutant effluent limits set out in the National Pollutant Discharge Elimination System (NPDES) permit under which Gwaltney was operating. The alleged violations were numerous discharges of several pollutants into the Pagan River near Smithfield, Virginia that were in excess of both daily and monthly average limitations established for those pollutants by the NPDES permit. The last of these violations reportedly occurred approximately one month before the suit was filed. The district court held that the citizen suit could be maintained despite the fact that there was no ongoing violation.

On appeal to the U.S. Court of Appeals for the Fourth Circuit, Gwaltney asserted that the district court lacked subject matter jurisdiction because Gwaltney had ceased violating the permit before the suit was filed. Gwaltney cited the *Hamker* case in support of that position. The Fourth Circuit disagreed with this contention and held that the words "in violation" were ambiguous and could be interpreted to encompass unlawful acts that occurred prior to the filing of the suit. Because of this ambiguity, the court examined the statutory structure and legislative history of the Act to determine the scope of citizen suits.

In reviewing the statutory structure of the Act, the court compared the provisions for government and citizen enforcement. It found that they were quite similar in that both were written in the present tense and used the same type of phraseology. The court also pointed out that government enforcement through the EPA has long included authority over past violations. Otherwise, a significant deterrent effect would be lost. The court concluded that the powers of citizen enforcement should be viewed as co-extensive with those of the government and, therefore, are applicable to past violations.

Gwaltney also argued that citizen suits are intended to be merely supplementary, and play a limited role in enforcement of the Act. The Fourth Circuit agreed that the role of citizen suits is limited, but said that jurisdiction of suits should be limited only as expressly provided for by Congress. These limitations include the lack of ability to impose criminal penalties or issue orders, notice requirements, and the inability to maintain an action when either the EPA or a state has taken action. The court expressed the feeling that if Congress had intended to further limit jurisdiction it would have done so expressly.

The Fourth Circuit examined the legislative history of the Act and stated that it does not lend strong support to either side of the argument. However, the court did seem to place some emphasis on the comments of Senator Muskie, one of the authors of the bill. Those comments indicate that citizens have the right to institute an action against any person who is or has been in violation of the Act.

Finally, the court distinguished the *Hamker* opinion on its facts. *Hamker* involved a one-time occurrence and no effluent permit or compliance orders were involved. The court went on to say, however, that even if the cases were factually similar, it would not adopt the rule of the Fifth Circuit in *Hamker*. *Pawtuxet Cove Marina, Inc. v. Ciba-Geigy Corp.*, 807 F.2d 1089 (1st Cir. 1986).

Owners of a residence and Pawtuxet Cove Marina, Inc. filed suit against Ciba-Geigy Corp. seeking imposition of civil penalties under §505 of the FWPCA and damages under state law. As in *Gwaltney* the defendant here was operating under an NPDES permit. Plaintiffs alleged that Ciba-Geigy's discharge of effluents containing excessive pollutants prevented them from dredging adjacent to their property. They claimed that this has resulted in economic losses and stress-produced illness.

The district court dismissed the §505 claim for lack of subject matter jurisdiction. The court held that the damage claims could have been brought under diversity jurisdiction but the plaintiffs could not prove that the dredging would have been done if the pollutants had not been discharged. The district court found that there were many other impediments to the dredging and that the plaintiffs had not made out a cause of action on the state law damage claims.

The case was appealed to the U.S. Court of Appeals for the First Circuit. The First Circuit affirmed both parts of the district court's decision and went into quite a bit of discussion as to whether the citizens could maintain the suit under §505. The district court had dismissed the action because the violations had ceased before the suit was filed. In fact, a tie-in had been made with a treatment facility and the defendant was no longer operating under the NPDES permit.

The plaintiffs attempted to rely on *Gwaltney* in instituting their suit for past violations. The First Circuit refused to adopt the *Gwaltney* standard. The court pointed out that it would have been easy for Congress to have inserted the

words "has violated" if that had been their intention. The court also quoted from §505 (f) (6) which says that no action may be maintained for permit violations unless the permit is in effect. This section is particularly applicable to the facts of this case.

The First Circuit's test would allow an action under §505 to go forward if the plaintiff can show there is a likelihood that if the defendant is not enjoined, he will violate the Act in the future. The First Circuit rationalized that this interpretation is consistent with the injunctive purposes of the Act. The court suggested that in applying this approach, district courts should consider such factors as whether the event was isolated or recurrent, whether *scienter* existed on the part of the defendant, and whether the defendant is sincere in assuring no future violations will occur. The court states that by taking this approach a plaintiff may recover a penalty judgment for past violations, if the plaintiff has made, in good faith, allegations warranting injunctive relief, even though the injunction itself may not be obtained.

Summary

Three different Circuits have reached differing conclusions when applying the §505 citizen suit provision of the FWPCA to past violations. The Fifth Circuit requires a violation that is occurring at the time the suit is filed. The Fourth Circuit, on the other hand, interprets it to include unlawful acts that have occurred prior to the date the lawsuit is filed, as well as to violations that are still occurring. The First Circuit takes an intermediate position, holding that a citizen suit may proceed for past violations if there is a "continuing likelihood" that the defendant will violate the Act in the future. On January 12, 1987 the United States Supreme Court announced that it has granted *certiorari* to review the *Gwaltney* case. The Court will have the opportunity to resolve these differences and possibly establish a reasonable standard.

It is the opinion of this writer that the problem should be resolved in a manner similar to the *Gwaltney* decision. Because the words of the statute are ambiguous, Congressional intent should be determined from the legislative history and statutory structure of the Act. A point in favor of a finding of ambiguity is the mere fact that three different circuits have reached three different results in interpreting the statute. Also, the Fourth Circuit presented some valid arguments for upholding the proposition that Congress intended for the statute to apply to purely past violations.

The *Pawtuxet Cove* holding is unacceptable because introducing subjective factors such as sincerity of the defendant, *scienter*, and good faith of the plaintiff does not seem consistent with an Act that is set out in objective terms and standards.

Finally, it seems logical that if citizen suits are allowed in these situations, the overall purpose of the Act in limiting water pollution will be met. The above three cases are examples of situations where there have been alleged violations and for one reason or another neither the EPA nor the states have taken action. The ability of a citizen to maintain a suit in cases like these would be a significant deterrent for similar acts in the future.

John D. Cosmich

NEW MISSISSIPPI LEGISLATION ON NATURAL RESOURCE USE

The recently concluded legislative session passed several bills that will affect Mississippi's use of natural resources. The following summary was provided by the Legislative Services Office of the House of Representatives.

Senate Bill 2123: This bill transfers to the Commission on Natural Resources the duties previously allocated to an ex officio commission composed of the Governor, State Forester and the Director of Conservation of the State Game and Fish Commission, with respect to the determination of appropriate use of state lands for parks, forests, game and fish refuges or preserves, recreation or similar uses. The bill further changes references to the Land Commissioner to the Secretary of State. Effective date: July 1, 1987.

Senate Bill 2216: This act removes the requirement that the Commission on Natural Resources dispose of state parks or historical sites which were subsidized in excess of \$2.00 per visitor in Fiscal Year 1986.

The implementation of this provision would have resulted in losses of federal funds or the refund of such funds by the state. It was further determined that there was no market for private leases and the local governments were unwilling to take over the subject parks and sites. Effective date: March 19, 1987.

Senate Bill 2632: Amendments to the "Individual Onsite Wastewater Disposal Systems Law of 1978." The prior statute restricted the types of wastewater disposal systems which the Board of Health could approve and was out of date with the Federal Clean Water Act which placed jurisdiction over most waste disposal systems under the Department of Natural Resources.

The bill directs the Board of Health and the Department of Natural Resources to administer this program in a very flexible manner to provide maximum options to builders consistent with health standards and federal law. The agencies are exempted from the periods of notice under the Administrative Procedures Law until July 1, 1987, in order that new regulations may be adopted before the major building season.

A very important feature of the bill is that persons engaged in the business of installing individual onsite wastewater disposal systems must be licensed by the Board of Health from and after January 1, 1988. A license will also be required for persons who remove sludge from septic tanks or other such systems; however, with respect to the sludge removers only, if they are in the business prior to July 1, 1987, they are licensed without fee, bond or other qualification. Effective date: April 2, 1987; and the operative provisions of the Individual Onsite Wastewater Disposal Law are repealed July 1, 1989.

Senate Bill 2759: This bill touches several areas relating to seafood resource management, particularly oyster harvesting and development of new technology:

(1) The Department of Wildlife Conservation (DWC) is authorized to develop and test onshore facilities to purify oysters which are removed from polluted waters. If the technology is shown to be commercially feasible, the DWC may license commercial interests to employ this method for harvesting oysters.

(2) The rebuilding of oyster reefs which is periodically necessary because of environmental factors is promoted by several changes in the relevant statutes:

- (a) The replanting program is placed under the direction of the chief seafood law enforcement officer;
- (b) The shell retention fee is increased to 50¢ per sack and earmarked for use by DWC for oyster production;
- (c) Local governments are empowered to assist the DWC in planting and replanting oyster shells;
- (d) The DWC is directed to return optimum amount of shells to the reefs;
- (e) Equal amounts of shells are to be planted in the waters of each Coast county;
- (f) All public reefs are considered open unless affirmatively closed by the Commission (some reefs were closed and never rechecked or reopened) and a closed reef must be rechecked every 48 hours in order that it may be opened as soon as it is safe to do so; the time period for depuration of oysters is made flexible consistent with public health and not set at an arbitrary 15 days; and
- (g) Local governments are authorized to lease water bottoms from the state to establish oyster reefs.

(3) The provision for the appointment of law enforcement officers and a reserve unit are reenacted and inserted in statute for the DWC grant of general powers.

(4) The DWC is authorized:

- (a) To allow use of double rigs with nets no longer than 25 feet at the corkline each, within the island chain;
- (b) To permit boats not licensed in Mississippi to land seafood except redfish, harvested outside of state waters in state ports;
- (c) To extend reciprocity with respect to licenses and permits to fishermen from other Gulf Coast states where similar provision is made for Mississippi fishermen in such states;
- (d) To establish checkpoints for out-of-state boats leaving and entering Mississippi waters when Mississippi boats are required to pass similar inspection in foreign state waters;
- (e) To destroy contraband and seized equipment not otherwise disposed;
- (f) To promulgate rules under the Administrative Procedures Act except that hearing on all rules related to marine resources shall be held in Coast counties.

Effective date: April 2, 1987.

Senate Bill 2778: This bill provides for a program of adoption of standards for underground water quality to detect contamination from agricultural

chemicals. The Department of Natural Resources (DNR) is empowered to develop groundwater monitoring methods. When unacceptable levels of contamination are detected, the DNR notifies the Department of Agriculture and Commerce. It is then the duty of the Commissioner of Agriculture to mitigate the contamination by altering the authorized use or application practices or suspending the use of the offending chemical.

This program is funded by an increased fee on the registration of agriculture chemicals. The fee is relatively small in relation to sales and should not affect the cost of such chemicals to the users.

An amendment to the bill, which is unrelated to underground water quality, requires real estate developers who use underground water for primarily aesthetic purposes to obtain a permit for such use. Effective date: July 1, 1987.

BOOK REVIEW

Living With The Alabama-Mississippi Shore

Canis, Neal, Pilkey Jr. and Pilkey Sr., eds.

Coastal residents are aware that along with the advantages of living near the shore come unique problems associated with severe storm surges, high winds, and beach erosion. To help property owners along Alabama and Mississippi coasts successfully cope with these problems, the Mississippi-Alabama Sea Grant Consortium cooperated in publication of *Living With the Alabama-Mississippi Shore* (MASGP-84-008).

This book provides its readers with guidelines that give those building and/or buying shoreline property maximum protection for life and property. Among other things it includes site-safety maps, detailed coastline descriptions, advice on land use laws, and a discussion of the dynamics of shoreline change. It also contains a complete reference to federal, state, and local agencies involved in coastal development, along with a hurricane hazard checklist.

The book, the eighth in a series entitled *Living With the Shore*, is available from Duke University Press, 6697 College Station, Durham, North Carolina 27708; \$24.95 (cloth), \$11.75 (paperback).

EXXON v. FISCHER

807 F. 2d 842 (9th Cir. 1987)

Introduction

Recognizing the need to protect coastal areas from inappropriate development, Congress in 1972 passed the Coastal Zone Management Act (CZMA). 16 U.S.C.A. §§1451 *et seq.* (West 1985). One of the purposes of the CZMA is to encourage coastal states to formulate coastal management plans (CMPs) in order to balance conflicts between development and resource protection. An important component of the CZMA is its "consistency" provision which requires that federally permitted or licensed activities affecting land or water uses in the coastal zone be consistent, as much as practicable, with a state's CMP. To implement this provision, the affected state examines a development plan and makes a determination whether the proposed activity is consistent with the CMP. This step is called "consistency certification."

A state may deny certification upon a finding that the proposed activity is inconsistent with the CMP. This is called a "consistency objection." An applicant may appeal the state's consistency objection to the Secretary of Commerce. After a hearing, wherein both the applicant and the state have the opportunity to present evidence and arguments, the Secretary may grant the applicant a federal permit despite a state's consistency objection, if he finds that the activity is otherwise consistent with the objectives and purposes of the CZMA or is necessary to national security.

The National Oceanic and Administrative Agency (NOAA) has promulgated regulations to aid the Secretary in making this determination. These regulations provide that, in order to be considered consistent with the objectives and purposes of the CZMA, the activity must satisfy all of the following four requirements: (1) the activity must further at least one of certain competing interests (such as oil and gas exploration) listed in the regulations; (2) the activity's contribution to the national interest must outweigh the adverse impacts on the coastal zone; (3) the activity must not violate any requirements of the Clean Air Act or the Federal Water Pollution Control Act; and (4) there must be no reasonable alternative that would permit the activity to be conducted in a manner consistent with the CMP. 15 C.F.R. §930.121 (1986). In order for the activity in question to be considered necessary to national security, the Secretary must find that "national defense or another national security interest would be significantly impaired if the activity were not permitted to go forward as proposed." 15 C.F.R. §930.122 (1986).

Exxon v. Fischer arose from the California Coastal Commission's issuance of a consistency objection to Exxon's proposal to drill an exploratory well off the California coast. This article discusses the administrative and judicial decisions that have resulted from the Commission's action.

Analysis

In January 1983, Exxon acquired drilling rights, pursuant to a federal lease, in the Santa Barbara Channel. The leased tract was located seven miles off

the California coast. As the CZMA required, Exxon submitted its drilling proposal to the Commission for certification. In February 1984, the Commission denied certification on grounds that the activity would substantially interfere with the thresher shark fishery in that area. Although the harvest takes place on the outer continental shelf outside state waters, the Commission argued that consistency certification is required because shore-based industries dependent upon this commercial fishery would be adversely affected.

The Commission proposed to allow Exxon to drill during the off-season (Thanksgiving to May). Exxon refused to accept the Commission's limitation, citing the high cost of maintaining an idle ship while waiting to drill. The company appealed to the Secretary of Commerce. The Secretary applied the four-part test mentioned above to determine whether Exxon should be granted a federal permit over the Commission's objection. The Secretary denied Exxon's appeal in November 1984 upon a finding that drilling during the off-season was a "reasonably available alternative."

Pending resolution of its appeal to the Secretary, Exxon filed suit in federal district court seeking a declaratory judgment that the Commission's refusal to certify the drilling proposal was invalid. Exxon argued that the consistency objection violated the CZMA because the drilling would affect no land or water use within California's coastal zone. The oil company also argued that the Commission lacked authority under the CZMA to object to drilling activities beyond the three-mile territorial sea (the outer boundary of California's coastal zone), particularly when drilling would affect only parochial economic interests, and not natural resources of the coastal zone as Congress intended. Thus, Exxon's position, derived from a narrow interpretation of the CZMA's legislative history, would limit state review to the effect of a proposal on the natural environment, and not economic effects upon coastal-based industries.

The California Coastal Commission responded that the legislative history of the CZMA demonstrated that "the Act was intended to address the social and economic impacts of outer continental shelf (OCS) development as well as the effects on the natural resources of the coastal zone." 10 *TCS Bulletin*, No. 1 at 14 (1987). To further support this argument, the Commission noted that NOAA has expressly required that policies protecting the commercial fishing industry be incorporated into California's CMP. The Commission also argued that the Secretary's decision superseded the Commission's action and that Exxon should be compelled to seek judicial relief against the Secretary. Because Exxon's suit against the state was a collateral attack upon the Secretary's decision, the Commission contended it was barred by the doctrine of *res judicata*, which holds that a legal decision, once made, may not be relitigated.

The district court held in favor of Exxon. Judge Pamela Ann Rymer found that the Secretary's review of a state's refusal to certify a coastal activity should be confined to a narrow set of policy considerations set out in NOAA's regulations. The Secretary, she decided, had no authority to rule upon

"whether the Commission acted within the scope of its authority under the substantive provisions of the CZMA." She stated further that judicial review of the Secretary's decision was unnecessary, so the case could be decided afresh. In adopting Exxon's interpretation of the CZMA, Judge Rymer held that commercial fishing on the OCS does not affect land or water uses in the coastal zone. Interference with commercial fishing may therefore not serve as the basis for a state consistency objection under the CZMA. Had this decision stood, the reach of state coastal management programs would have been substantially weakened.

On appeal to the Ninth Circuit, the California Coastal Commission leveled three attacks upon the district court judgment: (1) the federal court lacked jurisdiction to hear the case; (2) Exxon was precluded from using the Commission's consistency objection as grounds for a suit because the matter had already been litigated before the Secretary; and (3) the Commission was authorized under the CZMA to base a consistency objection upon potential adverse economic impact on an important coastal industry. The court of appeals disposed of the first contention on the ground that the case involved interpretation of a federal statute and therefore the district court had original jurisdiction.

The court of appeals then examined the nature of the Secretary's decision, applying a three-part test to determine whether the decision should preclude federal court review. It found that the Secretary had acted in a judicial capacity when he decided against granting Exxon a permit. The Secretary's refusal had followed a hearing in which evidence was admitted, briefs submitted, and arguments heard. Exxon had taken full advantage of the opportunity to present its case and rebut opposing evidence. It concluded that, because the Secretary had in fact addressed the issue presented before the district court, he had acted in a judicial capacity.

The court also found that the issue of the scope of the Commission's authority had been actually litigated before the Secretary. In the published decision, the Secretary had stated the issue in words similar to those later used by the district court. In refusing to grant Exxon a permit over the Commission's objection, the Secretary had actually resolved the issue against Exxon.

Finally, the court held that the Secretary's finding on the extent of the Commission's authority was necessary to his decision. In compliance with federal regulations, the Secretary had weighed the adverse effects of Exxon's drilling proposal against its benefits to the national interest. The Secretary found that benefits outweighed detriment, but that the risks could be avoided totally by drilling off-season. The court of appeals stated that the Secretary's decision to subordinate Exxon's interest to the state's would have been meaningless absent a finding that the Commission's objection was valid under the CZMA and that the interests it sought to protect were encompassed by the statute. In other words, the Secretary's holding on these two issues was necessary to his decision. Because Exxon had litigated the issue of the scope

of the Commission's authority before the Secretary, it was prohibited from relitigating the issue in a collateral proceeding. Exxon's proper course was therefore to seek judicial review of the Secretary's decision pursuant to the Administrative Procedure Act. Accordingly, the court of appeals reversed the district court's judgment.

The Ninth Circuit expressly stated that it had rendered no decision upon the merits of the scope of the Commission's authority under the CZMA. The case was therefore decided only upon procedural grounds. The issue of whether a state can base a consistency objection upon potential adverse effects to economic interests of a coastal industry remains open.

Conclusion

In general terms, the scope of the consistency provisions of the CZMA is still an undecided issue. However, the Ninth Circuit's decision in *Exxon v. Fischer* reinforces the integrity of the appellate procedure established by NOAA regulations. By giving the Secretary's decision binding effect, the court stated that such a decision represents final adjudication of the issues presented during an administrative hearing. As such, a decision of the Secretary of Commerce under the CZMA is insulated from collateral attack in subsequent, non-related suits. Therefore, although the court expressly stated that it did not reach the issue, the practical effect of its decision is to uphold the Secretary's finding that economic consequences suffice as grounds for a state consistency objection.

As this issue goes to press, the Department of Justice is considering intervention on Exxon's behalf in a petition for rehearing. If the petition is denied, it seems likely that Exxon will appeal the decision to the United States Supreme Court.

Louis Alexander

INTERNATIONAL PAPER CO. v. OUELLETTE

55 U.S.L.W. 4138 (1987)

Introduction

Pollution of the waterways of the United States continues to be of national concern. Solutions are particularly problematic in the context of interstate water pollution. Prior to the passage of the Federal Water Pollution Control Act (FWPCA) in 1972, if pollutants discharged from one state caused an adverse effect on an adjacent state, courts applied federal and state common laws of nuisance. The application of common law nuisance principles lost strength in the 1972 United States Supreme Court decision known as *Milwaukee I. City of Milwaukee v. Illinois*, 406 U.S. 91 (1972). In *Milwaukee I*, Illinois residents complained that inadequate treatment of sewage discharged into Lake Michigan by the city and county of Milwaukee was causing injury to their property in Illinois. The Court held that application of a federal common law of nuisance action was not inconsistent with the Water Quality Act in effect at that time. The reasoning was that the existing law did not provide a sufficient forum to complaining parties. The Court went on to say, however, that new federal laws could eventually preempt the field.

The erosion of federal common law of nuisance was taken one step further when Illinois and Milwaukee returned to court in 1981. *City of Milwaukee v. Illinois*, 451 U.S. 304 (1981) (*Milwaukee II*). Although the complaint was the same, the result was different. The Court there held that by creating a complex regulatory scheme under the FWPCA, Congress has "occupied the field" of water pollution. This establishment of such a comprehensive regulatory program therefore preempted federal common law of nuisance for interstate waters.

Case law prior to *Ouellette* makes it clear that federal common law is no longer an available remedy. On the other hand, the FWPCA does not preempt state common law of the source state. [See *Scott v. Hammond*, 731 F.2d 403 (7th Cir. 1984).] The issue in *Ouellette* was whether the savings clause of the FWPCA preserves a common law nuisance remedy under the law of the state where the injury occurred.

Analysis

The *Ouellette* case involved pollutants discharged on the New York side of Lake Champlain that adversely affected waters on the Vermont side of the lake. Vermont property owners sought relief in the form of compensatory damages for diminution in property value, punitive damages, and injunctive relief. They asserted that the discharge of pollutants into Lake Champlain constituted a "continuing nuisance" under Vermont common law, and that Vermont law was applicable under the savings clause of the FWPCA. The Supreme Court disagreed with the plaintiffs and, in a 5-4 decision, reversed the lower courts.

The Court found that the savings clause, although ambiguous, does preserve some traditional common law remedies. The Court then iterated three possible interpretations of the savings clause. The first interpretation would hold the clause applicable to those waters not already covered by the FWPCA. The Court rejected this interpretation, noting that virtually all surface water was covered by the Act, thereby making this possibility illogical. A second interpretation would preserve a remedy under the law of the state in which the injury occurred, as urged by the plaintiffs. The Supreme Court rejected this interpretation as well.

Instead, the Court chose a third alternative that preserves state nuisance laws of the source state only. The Court argued that to hold otherwise would jeopardize uniformity of the federal scheme under the FWPCA. It stated that applying the law of the affected state rather than the source state would allow states to do indirectly what they could not do directly under the FWPCA; that is, regulate out-of-state sources. The Court went on to say that a state has the power to adopt more stringent regulations than those required by federal law and apply them to sources within their state. The Court also noted that if the defendant is violating its permit, a citizen suit may be brought to compel compliance. Finally, the Court held that even though the common law of the source state must be applied, the affected state is still a proper forum in which to bring the suit.

Conclusion

The reasoning and alternate remedies offered by the Supreme Court offer scant relief to the affected state. The Court approves of a state adopting more stringent regulations for sources within its borders, yet prevents such a state from applying its own law to protect its waters from illegal pollution originating in an adjacent state.

The Court's use of "promoting uniformity" as a rationale for its holding is spurious. State water pollution laws are not uniform. For example in *State v. Champion International Corp.*, 709 S.W. 2d 569 (Tenn. 1986), a case now on appeal to the Supreme Court, the Tennessee Supreme Court held that even though North Carolina's standards were far below those of Tennessee, so long as they met the minimum set by the FWPCA, Tennessee has no cause of action. This is so even though the pollution in question affected only a few miles of North Carolina waterways before entering Tennessee.

Third, use of the citizen suit to compel compliance with a discharge permit could be in actuality no remedy at all. For example, in *Milwaukee II*, the defendant was under an order to comply with a discharge permit. However, because a time-table was used for compliance, Illinois property owners continued to be adversely affected. Such suit is also ineffective in a case such as *Champion* where the adjacent state simply has lower standards, but meets the minimum set by the FWPCA.

The Court's decision results in an affected state occupying a subordinate position to the source state, for the stated purpose of protecting uniformity of the federal law. However, by allowing each state to set up its own standards,

it would appear that the law does not demand uniformity. More importantly, the FWPCA is designed to protect the environment. Allowing states reasonable alternatives to protect their resources from the action of neighboring states is a more compelling policy than protecting the uniformity of a statute that is not really uniform at all.

P. Colleen Coffield

LAGNIAPPE (A Little Something Extra)

At the beginning of the year the Mississippi-Alabama Sea Grant Legal Program changed its name. Our new name is the Coastal and Marine Law Research Program of the Mississippi-Alabama Sea Grant Consortium. This change reflects more closely the substantive areas of law and policy with which we are concerned. Our affiliation with the Mississippi-Alabama Sea Grant Consortium has not changed.

Casey Jarman, director of the Coastal and Marine Law Research Program and senior editor of the **WATER LOG**, will be leaving us on August 1, 1987. She has accepted a position on the law faculty of the University of Hawaii. Casey has been with the Program since 1979, and with the **WATER LOG** since its inception the following year. She will be missed. A nationwide search is underway for her successor, and the deadline for application is May 15. Inquiries should be directed to William Hooper, Jr., Mississippi Law Research Institute, University, MS 38677, (601) 232-7775.

As of April 18, the United States is formally a party to the Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar Convention). By ratifying this treaty, we join thirty-nine other nations in adopting wetlands preservation as an international goal. The Convention encourages member governments to designate significant wetlands within their borders for inclusion on a list of areas valued worldwide for biological and other scientific features.

At the request of officials of the state of Texas, the United States will formally ask the International Maritime Organization to ban garbage dumping in the Gulf of Mexico when the organization meets again next December. If the request is successful, Annex V of the International Convention for the Prevention of Pollution from Ships (MARPOL) will be amended to place the Gulf in the same special category that protects the Baltic, the Black Sea, the Mediterranean, the Persian/Oman Gulf, and the Red Sea, from dumping of garbage from ships. The proposed ban on dumping would cover all garbage except food wastes.

Governors of Alabama, Mississippi, Louisiana, and Texas have agreed to join the U.S. Department of the Interior in setting up a task force to study the distribution of marine minerals in the Gulf and the economic feasibility of extraction development under the Outer Continental Shelf Lands Act. Geologists believe that the Gulf of Mexico may contain commercial quantities of heavy mineral sands, sulphur, and sand and gravel for construction. An organizational meeting was held in January in New Orleans.

Mississippi's Bureau of Marine Resources is planning to develop a prototype oyster depuration (cleansing) facility to encourage the construction of privately operated commercial facilities. Until recently state law required that oysters gathered in restricted waters be depurated on water bottoms with suitable water quality for a minimum of 15 days before being marketed. Because of limited availability of suitable depuration beds and the cost of transporting and monitoring, a sizable part of Mississippi's oyster resource matures and dies without harvest. Onshore depuration facilities, the BMR claims, can make substandard oysters marketable within as little as 48 hours. With the recent change in state law (see Recent Mississippi Legislation), the BMR is hopeful that successful depuration in a prototype facility will clear the way for FDA and State Board of Health approval of oysters depurated in commercial onshore facilities.

Admiralty Law - (see also: Fishing, Historic Shipwreck Preservation and Law of the Sea)

- "Treasure Salvors I, II, III. Exercises in the Law of Finders-Keepers" by Robert W. Polk - Vol.1 #4.
- "Admiralty Law: An Overview" by James Robertson - Vol.2 #3.
- "In Rem Arrest of a Vessel: Is it Constitutional?" by Cathy Jacobs - Vol.2 #3.
- "Florida Department of State v. Treasure Salvors, Inc." by Catherine Mills - Vol.2 #3.
- "The Wreck Removal Act of 1899" by Paul Gunn - Vol.2 #3.
- "Foremost Insurance Co. v. Richardson" by staff - Vol.2 #3.
- "Tallentire v. Offshore Logistics, Inc." by Greg Winters - Vol.6 #1.

Barrier Island (see "Islands")Boating

- "Federal Regulation of Boating Activities" by Holt Montgomery - Vol.4 #4.
- "Liability for Personal Injury and Property Damages Arising from Boating Accidents" by Casey Jarman and Cornelia Burr - Vol.4 #4.
- "Alabama Boating Law" by Cornelia Burr and Casey Jarman - Vol.4 #4.
- "Mississippi Boating Law" by Cornelia Burr and Casey Jarman - Vol.4 #4.
- "Recent Legislation - Mississippi" (State Registration of Vessels) by Alan Evans - Vol.6 #3.
- "Wallop - Breaux (Act) to Provide Boating and Sport Fishing Funds" - Reprint - Vol.4 #4.

Book Reviews

- "Book Review" (Scheuler, Preserving the Pascagoula (River Swamp), 1980) by Casey Jarman - Vol.2 #2.
- "Book Review" (Duerksen, Ed., A Handbook on Historic Preservation Law, 1983) by Cornelia Burr - Vol.5 #1.
- "Coastal Development Examined in New Book" (Living With the Alabama - Mississippi Shore) by staff - Vol.5 #2.
- "Federal Fisheries Management: A Guide to the Magnuson Fisheries Conservation and Management Act by Jon Jacobson, Daniel Conner, and Robert Tozer" - Vol.6 #1.

Boundary Disputes

- "Alabama and Mississippi Boundary Cases" by Casey Jarman - Vol.4 #4.
- "Alabama and Mississippi Boundary Cases: Update" by Casey Jarman - Vol.5 #1.

Bureau of Pollution Control (see Environmental Protection and Quality)Cases

- "Brief: Middlesex County Sewerage Authority v. National Sea Clammers Association" by Casey Jarman - Vol.1 #3.
- "Treasure Salvors I, II, III. Exercises in the Law of Finders-Keepers" by Robert W. Polk - Vol.1 #4.
- "National Wildlife Federation v. Gorsuch - U.S. District Court, D.C. (No. 79-0915, Jan. 29, 1982)" by Mike Gibbs - Vol.2 #1.
- "Cinque Bambini v. State of Mississippi and Mississippi Public Trust Doctrine" by Catherine Mills - Vol.2 #2.
- "Florida Dept. of State v. Treasure Salvors, Inc." by Catherine Mills - Vol.2 #3.
- "Foremost Insurance Co. v. Richardson" by staff - Vol.2 #3.
- "National Wildlife Federation v. Gorsuch" (DC Circuit Court of Appeals) by Casey Jarman - Vol.3 #1.
- "Sporhase v. Nebraska Ex Rel. Douglas (Water as an Article of Commerce)" by Bo Bricklemeyer - Vol.3 #1.
- "CZMA Consistency Determinations in OCS Lease Sales: A Case Law Analysis" by Al Sage III - Vol.3 #2.
- "CZMA Consistency Determinations in OCS Lease Sales Part II: California v. Watt" by Al Sage III - Vol.3 #4.
- "OCS Lease Sales and the Coastal Zone Management Act: Congressional Action to California v. Watt" by Catherine Mills - Vol.4 #1.
- "Bostic et al. v. United States" by Casey Jarman - Vol.4 #1.
- "University of South Alabama v. State of Alabama" by David Calder - Vol.4 #3.
- "Conner v. Aerovox, Inc." (Maritime tort claim for water pollution) by Casey Jarman - Vol.4 #3.
- "NOAA Review of Federal Consistency Process" by staff - Vol.4 #3.
- "Alabama and Mississippi Boundary Cases" by Casey Jarman - Vol.4 #4.
- "Alabama and Mississippi Boundary Cases: Update" by Casey Jarman - Vol.5 #1.
- "Bostic et al. v. United States, 753 F.2d 1292 (4th Cir. 1985)" by Robert O'Dell - Vol.5 #2.
- "Exxon v. Fisher" by Martha Murphy - Vol. 5 #4.
- "Tallentire v. Offshore Logistics Inc." by Greg Winters - Vol.6 #1.
- "United States v. Riverside Bayview Homes" (filling wetlands) by Louis Alexander - Vol. 6 #1.
- "Cinque Bambini Partnership v. Mississippi" by Casey Jarman - Vol.6 #3.
- "Organized Fishermen of Florida v. Hodel" by Alan Evans - Vol.6 #3.
- "Japan Whaling Association and Japan Fisheries Association v. American Cetacean Society" by Mellie Billingsley - Vol.6 #3.

Channelization (for related articles see also Flood Control)

- "Opinion - Channelization" by Chester A. McConnell - Vol.3 #3.

Coastal Zone Management (see also Wetlands, Marine Sanctuaries and Islands)

- "Mississippi Coastal Program is Approved" by Mike Gibbs - Vol.1 #1
- "Highlights of Mississippi's Coastal Program" by Casey Jarman - Vol.1 #1.
- "Viewpoints Regarding Mississippi's Coastal Program" Vol.1 #1.
 1. "The Challenges Ahead" by Vic Frankiewicz, Jr.
 2. "A View From the Green Side" by Cy Rhode
 3. "Unconstitutional, Unnecessary and Unwanted" by Stanford Morse Jr.
- "Permit Application Process for Regulated Activities" by Stanton Fountain - Vol.1 #1.
- "Louisiana and Alabama Coastal Programs" by Casey Jarman - Vol.1 #1.
- "Opinion: Toward One-Stop Permitting... Slowly" by Mike Gibbs - Vol.1 #1.
- "Opinion: Bureau of Marine Resources - Friend or Foe of Deer Island?" by Casey Jarman and Stanton Fountain - Vol.1 #2.
- "Coastal Zone Management Act Amendments" by Casey Jarman - Vol.1 #2.
- "Coastal Wetlands Protection Law Amended" by Cathy Jacobs - Vol.2 #2.
- "Who Owns the Mississippi Sound?" by Cathy Jacobs - Vol.2 #2.
- "Recent Legislation" (after the fact permitting) by staff - Vol.2 #3.
- "CZMA Consistency Determinations in OCS Lease Sales: A Case Analysis" by Al Sage III - Vol.3 #2.
- "CZMA Consistency Determinations in OCS Lease Sales Part II: California v. Watt" by Al Sage III - Vol.3 #4.
- "Reaction to California v. Watt" by Catherine Mills - Vol.4 #1.
- "Coastal Development Examined in New Book" (Living With the Alabama - Mississippi Shore) by staff - Vol.5 #2.
- "CZMA 'Consistency' Regulations Amended" by Martha Murphy - Vol.5 #3.
- "Exxon v. Fisher" by Martha Murphy - Vol.5 #4.

Condominiums

- "Mississippi Condominium Law" by Tim Weeks - Vol.4 #2.
- "Alabama Condominium Law" by Tim Weeks - Vol.4 #2.
- "Time Share Condominiums" by Martha Murphy - Vol.4 #2.
- "The Uniform Condominium Act" by Tim Weeks - Vol.4 #2.

Environmental Protection & Quality (see also Water and Water Laws, State Departments, Coastal Zone Management, Flood Control, Wildlife Management, Federal, Departments, and Hazardous Materials)

- "Brief: Middlesex County Sewerage Authority v. National

- "The Gulf of Mexico Fishery Management Council" by Mike Gibbs - Vol.1 #2.
- "Environmental Protection Agency" by staff - Vol.4 #1.
- "U.S. Fish & Wildlife Service" by staff - Vol.4 #2.
- "NOAA Review of Federal Consistency Process" by staff - Vol.2 #3.

Federal Legislation (see also Federal Regulation)

- "Coastal Zone Management Act Amendments" by Casey Jarman - Vol.1 #2.
- "Federal Policy on Barrier Islands" by Stanton Fountain - Vol.1 #2.
- "Federal Port Legislation" by Stanton Fountain - Vol.1 #3.
- "Port Legislation in the 97th Congress" by Mike Gibbs - Vol.1 #3.
- "Federal Water Pollution Control Act" by staff - Vol.2 #1.
- "Rivers and Harbors Act (Summary)" by staff - Vol.2 #1.
- "Deep Water Port Act of 1974" by staff - Vol.2 #1.
- "Federal Policy Toward Barrier Islands-Update" (Omnibus Reconciliation Act of 1981) by Casey Jarman and Rich Littleton - Vol.2 #3.
- "The Wreck Removal Act of 1899" by Paul Gunn - Vol.2 #3.
- "Coastal Barrier Resources Act" by staff - Vol.2 #4.
- "Federal Offshore Oil and Gas Leasing" (Submerged Lands Act and the Outer Continental Shelf Lands Act) by Tim Weeks and Casey Jarman - Vol.3 #2.
- "Federal Flood Control Legislation" by Casey Jarman - Vol.3 #3.
- "National Estuarine Program" by staff - Vol.4 #1.
- "Ocean Dumping Act" by Cathy Jacobs - Vol.2 #1.
- "Ocean Dumping Act" by David Calder and Casey Jarman - Vol.4 #3.
- "Federal Preservation Law" by Casey Jarman - Vol.5 #1.
- "Proposed Historic Shipwreck Legislation" by Greg Winters and Cornelia Burr - Vol.5 #1.
- "The Endangered Species Act" by Louis Alexander - Vol.5 #3.
- "The Marine Mammal Protection Act" by Louis Alexander - Vol.5 #3.
- "Transportation of Hazardous Materials: Federal Legislation" by Cornelia Burr and Robert O'Dell - Vol.6 #1.
- "Federal Fisheries Management: A Guide to the Magnuson Fishery Conservation and Management Act by Jon Jacobson, Daniel Conner, and Robert Tozer" (Book Review) - Vol.6 #1.
- "Congress Responds to Crisis" (fishing vessel insurance bill - failed in House) by Robert O'Dell - Vol.6 #2.

Federal Regulation

- "Federal Regulation of Seafood Quality" by Casey Jarman - Vol.3 #4.
- "Federal Regulation of Boating Activities" by Holt Montgomery - Vol.4 #4.
- "CZMA 'Consistency' Regulations Amended" by Martha Murphy - Vol.5 #3.

- "Redfish Management in the Gulf of Mexico: A Regulatory Challenge" by Robert O'Dell - Vol.6 #3.

Fishing and Fisheries Management, (see also Fishing - Sport, Seafood, Shrimp, and Reefs)

- "Fisheries Management in the Gulf of Mexico" by Mike Gibbs - Vol.1 #2.
- "The Gulf of Mexico Fishery Management Council" by Mike Gibbs - Vol.1 #2.
- "American Fisheries Promotion Act" by Mike Gibbs - Vol.1 #2.
- "Gulf States Marine Fisheries Commission" by Larry Simpson - Vol.1 #2.
- "Marine Fisheries Management in Mississippi" by J.K. Herring - Vol.1 #2.
- "Discarded By-Catch in U.S. Commercial Marine Fisheries" by Eugene Brickleyer - Vol.4 #1.
- "Lacey Act" (marketing of illegally taken fish and wildlife)" by Casey Jarman - Vol.4 #1.
- "Documentation of Fishing Vessels" by Holt Montgomery - Vol.4 #1.
- "U.S. Fish and Wildlife Service" by staff - Vol.4 #2.
- "Recent Legislation - Mississippi" (Fishing taxes and licenses) by Casey Jarman - Vol.4 #3.
- "Reef Fishing Resources Protected by New Laws" (Reprint) - Vol.4 #4.
- "Federal Fisheries Management: A Guide Book to the Magnuson Fishery Conservation and Management Act" by Jon Jacobson, Daniel Conner and Robert Tozer" (Book Review) - Vol.6 #1.
- "The Crisis in Fishing Vessel Insurance" by staff - Vol.6 #2.
- "The Business of Marine Insurance" by Dennis Nixon - Vol.6 #2.
- "Improved Forms of Compensation for Fishing Vessel Injury" by Dennis Nixon - Vol.6 #2.
- "Congress Responds to Crisis" (fishing vessel insurance bill - failed in House) by Robert O'Dell - Vol.6 #2.
- "Redfish Management in the Gulf: A Regulatory Challenge" by Robert O'Dell Vol.6 #3.
- "Organized Fishermen of Florida v. Hodel" by Alan Evans - Vol.6 #3.
- "Recent Legislation - Mississippi" (Restrictions on Redfish and other species, e.g. King Mackerel) by Alan Evans - Vol.6 #3.
- "Louisiana Redfish Laws" by Fred Whitrock and Mike Wascom - Vol.6 #3.

Fishing and Fisheries Management, Sport

- "U.S. Fish and Wildlife Service" by staff - Vol.4 #2.
- "Recent Legislation - Mississippi" (marine records) by Casey Jarman - Vol.4 #3.
- "Recent Legislation-Mississippi" (fishing vessel taxes and licenses) by Casey Jarman - Vol.4 #3.

Sea Clammers Association" (no private money damages under Fed. Water Pollution Control Act and Marine Sanctuaries Act) by Casey Jarman - Vol.1 #3.

- "Marine Pollution on the Mississippi Coast" by staff - Vol.2 #1.
- "Federal Water Pollution Control" by Staff - Vol.2 #1.
- "Mississippi Air and Water Pollution Control Act" by staff - Vol.2 #1.
- "Oil Spill Liability Under the Clean Water Act" by Paul Gunn - Vol.2 #1.
- "An Opinion on the Gulf Coast Pollution Problem from Bureau of Pollution Control, Department of Natural Resources" - Vol.2 #1.
- "National Wildlife Federation v. Gorsuch - U.S. District Court District of Columbia (water discharged from dams ruled to be from a "point source" - later reversed by D.C. Circuit) by Mike Gibbs - Vol.2 #1.
- "Ocean Dumping Act" by Cathy Jacobs - Vol.2 #1.
- "The Gulf Coast Wastewater Saga" by Stanton Fountain - Vol.2 #1.
- "The Marine Sanctuaries Program" by Catherine Mills - Vol.2 #4.
- "Opinion: The Ruchem Incident" by Cathy Jacobs - Vol.2 #4.
- "National Wildlife Federation v. Gorsuch - D.C. Circuit Court of Appeals" (designating water discharged from dams as a non-point source pollution) by Casey Jarman - Vol.3 #1.
- "Opinion: Re-Authorization of the Marine Sanctuaries Program" by Michael Weber - Vol.3 #1.
- "National Estuarine Sanctuary Program" by staff - Vol.4 #1.
- "Conner v. Aerovox, Inc." (maritime tort claim for water pollution) by Casey Jarman - Vol.4 #3.
- "The Alabama Environment: A Report, 1982-1985" by Martha Murphy - Vol.5 #4.
- "Cleaning Up Maritime Hazardous Substance Discharges: Who is Responsible?" by Casey Jarman - Vol.4 #3.
- "Ocean Dumping Act" by David Calder and Casey Jarman - Vol.4 #3.
- "The Evolution of Cooperation in Natural Resources Law: The Drifter/Habitue Distinction" by William H. Rodgers, Jr. - Vol.6 #4.
- "Management of Large Marine Ecosystems: Developing A New Rule of Customary International Law" by Martin H. Belsky - Vol.6 #4.
- "New Federalism Ships Out to Sea: Controlling Pollution From Vessels" by Miranda Wecker - Vol.6 #4.

Estuaries (see also Wetlands)

- "National Estuarine Sanctuary Program" by staff - Vol.4 #1.

Federal Departments (see also Federal Legislation)

- "Wallop-Breaux (Act) to Provide Boating and Sport Fishing Funds" (Reprint) - Vol.4 #4.
- "Louisiana Redfish Laws - 1986" by Fred Whitrock and Mike Wascom - Vol.6 #3.

Flood Control and Floodplain Management

- "Federal Flood Control Legislation" by Casey Jarman - Vol.3 #3.
- "Mississippi's Flood Control Legislation" by Catherine Mills - Vol.3 #3.
- "Floodplain Management in Alabama" by Tim Weeks - Vol.3 #3.
- "Opinion - Channelization" by Chester A. McConnell - Vol.3 #3.
- "Local Floodplain Management" by Holt Montgomery - Vol.3 #3.
- "Alabama Floodplain Management: Update" by Tim Weeks - Vol.3 #4.
- "Bostic et al. v. U.S." (Cancellation of federal flood insurance for barrier island development) by Casey Jarman - Vol.4 #1.
- "Bostic et al. v. U.S., 753 F.2d 1292 (4th Cir. 1985)." by Robert O'Dell - Vol.5 #2.

Good Samaritan Statutes

- "Good Samaritan Statutes: Protection or False Sense of Security?" by Robert O'Dell - Vol.6 #1.

Hazardous Materials (see also Environmental Protection and Quality)

- "Ocean Dumping Act" by Cathy Jacobs - Vol.2 #1.
- "Cleaning Up Maritime Hazardous Substance Discharges: Who Is Responsible?" by Casey Jarman - Vol.4 #3.
- "Ocean Dumping Act" by David Calder and Casey Jarman - Vol.4 #3.
- "Transportation of Hazardous Materials: Federal Legislation" by Cornelia Burr and Robert O'Dell - Vol.6 #1.
- "State Hazardous Material Transport Management and Emergency Response: Mississippi and Alabama" by Robert O'Dell - Vol.6 #1.
- "Good Samaritan Statutes: Protection or False Sense of Security" (relating to hazardous materials cleanup) by Robert O'Dell - Vol.6 #1.

Historic Preservation (see also Historic Shipwreck Preservation)

- "Federal Preservation Law" by Casey Jarman - Vol.5 #1.
- "Alabama Historic Preservation Law" by David Sabine - Vol.5 #1.
- "Mississippi Historic Preservation Law" by Catherine Mills - Vol.5 #1.
- "Book Review" (Duersken, Ed. A Handbook on Historic Preservation Law, c. 1983.) by Cornelia Burr - Vol.5 #1.

- "The Department of Archives and History: A State Resource: by Tatjana Adams and Cornelia Burr - Vol.5 #4.

Historic Shipwreck Preservation

- "Proposed Historic Shipwreck Legislation" by Greg Winters and Cornelia Burr - Vol.5 #1.
- "Federal Preemption of State Historic Shipwreck Policies" by Greg Winters and Cornelia Burr - Vol.5 #1.

Insurance (for articles relating to the Coastal Barrier

- Resources Act, see also Islands)
- "Foremost Insurance Co. v. Richardson" (pleasure vessels subject to admiralty jurisdiction) by staff - Vol.2 #3.
- "Bostic et al. v. U.S." by Casey Jarman - Vol.4 #1.
- "Bostic et al. v. U.S., 753 F.2d 1292 (4th Cir. 1985)" by Robert O'Dell - Vol.5 #2.
- "The Crisis in Fishing Vessel Insurance" by staff - Vol.6 #2.
- "The Business of Marine Insurance" by Dennis Nixon - Vol.6 #2.
- "Improved Forms of Compensation for Fishing Vessel Injury" by Dennis Nixon - Vol.6 #2.
- "Congress Responds to Crisis" by Robert O'Dell - Vol.6 #2.
- "No Fault In New Zealand: It Works" by William Hodge - Vol.6 #2.

Islands

- "Opinion: Bureau of Marine Resources - Friend or Foe of Deer Island?" by Casey Jarman and Stanton Fountain - Vol.1 #2.
- "Federal Policy on Barrier Islands: by Stanton Fountain - Vol.1 #2.
- "Deer Island Update" by staff - Vol.2 #1.
- "Federal Policy Toward Barrier Islands - Update" by Casey Jarman and Rich Littleton - Vol.2 #2.
- "Coastal Barrier Resource Act" by staff - Vol.2 #4.
- "Bostic et al. v. U.S." by Casey Jarman - Vol.4 #1.
- "Bostic et al. v. U.S., 753 F.2d 1292 (4th Cir. 1985)" by Robert O'Dell - Vol.5 #2.

Landowner's Liability

- "Recent Legislation - Mississippi" (limitation of landowner's liability to permittees such as hunters and fishermen) by Alan Evans - Vol.6 #3.

Law of the Sea

- "UNCLOS III - Treaty Status" by staff - Vol.2 #2.
- "The Law of the Sea Treaty, Customary Law and the United States" by William Burke - Vol.5 #2.
- "The 1982 Law of the Sea Treaty, as Applicable to Marine Transportation and Commerce" by Casey Jarman - Vol.5 #2.
- "Regulation of Fisheries Under the Convention on the Law of the Sea" by Cathy Floit - Vol.5 #2.
- "Deep Seabed Mining" by Casey Jarman - Vol.5 #2.

- "Continental Shelf Resources and the Law of the Sea Treaty" by Casey Jarman - Vol.5 #2.
- "Shifting Currents of Ocean Policy" by Dr. James Curlin - Vol.5 #4.
- "Management of Large Ecosystems: Developing A New Rule of Customary International Law" by Martin H. Belsky - Vol. 6 #4.
- "New Federalism Ships Out to Sea: Controlling Pollution" by Miranda Wecker, Vol.6 #4.

Littoral Rights

- "Littoral Rights" by Stanton Fountain - Vol.1 #4.

Marine Sanctuaries

- "Opinion: Re-Authorization of the Marine Sanctuaries Program" by Michael Weber - Vol.3 #1.
- "The Marine Sanctuaries Program" by Catherine Mills - Vol.2 #4.
- "Marine Sanctuaries: A Case Study of the Flower Garden Banks" by Martha Murphy - Vol.5 #4.

Mining - Seabed

- "Deep Seabed Mining" by Casey Jarman - Vol.5 #2.

Mississippi Sound

- "Who Owns the Mississippi Sound?" by Cathy Jacobs - Vol.2 #2.
- "Alabama and Mississippi Boundary Cases" by Casey Jarman - Vol.4 #4.
- "Alabama and Mississippi Boundary Cases: Update" by Casey Jarman - Vol.5 #1.

Ocean Dumping (see Hazardous Materials, Environmental Protection and Quality).

Ocean Law (see Law of the Sea)

Oil and Gas

- "Louisiana Offshore Oil Port" by Mike Gibbs - Vol.1 #3.
- "Mississippi's Policy re: Oil and Gas Leasing in the Mississippi Sound" by Mark Johnson - Vol.1 #4.
- "An Overview of Offshore Oil and Gas Leasing in Mississippi, Alabama, Louisiana, and Federal Waters" by Glen Warren Jr. - Vol.1 #4.
- "Oil Spill Liability Under the Clean Water Act" by Paul Gunn - Vol.2 #1.
- "Opinion: Oil and Gas Development in the Mississippi Sound - Environmental Concerns" by Michael Gibbs - Vol.2 #2.
- "Recent Legislation" (Mississippi Oil and Gas Leases) by staff - Vol.2 #3.
- "Offshore Oil and Gas Leasing" by staff - Vol.3 #2.
- "Federal Offshore Oil and Gas Leasing" by Tim Weeks and Casey Jarman - Vol.3 #2.
- "Leasing Mississippi's Offshore Oil and Gas Tracts" by

- Linda Marshal - Vol.3 #2.
- "Leasing Alabama's Offshore Oil and Gas Tracts" by John Olmstead - Vol.3 #2.
- "Watt's OCS Leasing Program - Progress Report" by Catherine Mills - Vol.3 #2.
- "CZMA Consistency Determinations in OCS Lease Sales: A Case Law Analysis" by Al Sage III - Vol.3 #2.
- "CZMA Consistency Determinations in OCS Lease Sales Part II: California v. Watt" by Al Sage III - Vol.3 #4.
- "OCS Lease Sales and the Coastal Zone Management Act: Congressional Reaction to California v. Watt" by Catherine Mills - Vol.4 #1.
- "Exxon v. Fisher" by Martha Murphy - Vol.5 #4.

Opinions

- "Viewpoints Regarding Mississippi's Coastal Program" by Vic Frankiewicz, Jr., Cy Rhode, and Stanford Morse - Vol.1 #1.
- "Opinion: Toward One-Stop Permitting... Slowly" (Coastal Zone Management) by Mike Gibbs - Vol.1 #1.
- "Opinion: Bureau of Marine Resources - Friend or Foe of Deer Island?" by Casey Jarman - Vol.1 #2.
- "Opinion: Port Development and the Federal Role" by Joe Cunningham - Vol.1 #3.
- "An Opinion on the Gulf Coast Pollution Problem from Bureau of Pollution Control, Department of Natural Resources" - Vol.2 #1.
- "Opinion: Oil and Gas Development in the Mississippi Sound - Environmental Concerns" by Michael Gibbs - Vol.2 #2.
- "Opinion: the Huchem Incident" (Bureau of Pollution Control closes plant) by Cathy Jacobs - Vol.2 #4.
- "Opinion: Re-Authorization of the Marine Sanctuaries Program" by Michael Weber - Vol.3 #1.
- "Opinion: Channelization" by Chester McConnell - Vol.3 #3.

Permitting

- "Permit Application Process for Regulated Activities" (Mississippi Coastal Program) by Stanton Fountain - Vol.1 #1.
- "Opinion: Toward One-Stop Permitting... Slowly" by Mike Gibbs - Vol.1 #1.
- "Recent Legislation" (after the fact permitting) by staff - Vol.2 #3.

Planning - Regional

- "Gulf Regional Planning Commission" by GRPC staff - Vol.4 #4.

Pollution (see Environmental Protection and Quality)

Ports

- "Preface: Ports - Challenge and Opportunity" by Mike Gibbs - Vol.1 #3.

- "Federal Port Legislation" by Stanton Fountain - Vol.1 #3.
- "Opinion: Port Development and the Federal Role" by Joe Cunningham - Vol.1 #3.
- "Port of Gulfport" reprinted - Vol.1 #3.
- "Louisiana Offshore Oil Port" by Mike Gibbs - Vol.1 #3.
- "Computer Plan Could Save Millions" (Reprint) - Vol.1 #3.
- "Summaries: Deep Water Port Act" by staff - Vol.2 #1.
- "Summaries: Rivers and Harbors Act" by staff - Vol.2 #1.

Public Trust Doctrine

- "Cinque Bambini v. State of Mississippi and Mississippi Public Trust Doctrine" by Catherine Mills - Vol.2 #2.
- "University of South Alabama v. State of Alabama" ("public interest" exception) by David Calder - Vol.4 #3.
- "Cinque Bambini Partnership v. Mississippi" by Casey Jarman - Vol.6 #3.

Real Estate (see also Condominiums)

- "Help for the Consumer in the Real Estate Marketplace: The Interstate Land Sales Full Disclosure Act" by Holt Montgomery - Vol.4 #2.

Rivers (see Waterways)

Salvage - Marine (see Admiralty)

Sea Grant

- "Sea Grant Awards" by staff - Vol.2 #2.
- "Sea Grant Legal Program to Serve as a Clearinghouse" (for information concerning regulatory mechanisms affecting Tennessee-Tombigbee Waterway barge transportation) by Cornelia Burr - Vol.4 #4.
- "Alabama Sea Grant Advisory Service: Your Sea Grant Connection" by William Hosking - Vol.6 #1.
- "Mississippi Sea Grant Advisory Service" by David Veal and Dave Burrage - Vol.6 #3.

Seafood (see also Shrimp)

- "Recent Legislation" (Mississippi oyster regulations) by staff - Vol.2 #3.
- "Federal Regulation of Seafood Quality" by Casey Jarman - Vol.3 #4.
- "Alabama Seafood Quality Regulatory Scheme" by Tim Weeks - Vol.3 #4.
- "Seafood Quality Regulation in Mississippi" by Holt Montgomery and Casey Jarman - Vol.3 #4.
- "Interstate Shellfish Sanitation Conference" by Tim Weeks and Casey Jarman - Vol.3 #4.
- "Recent Legislation - Mississippi" (seafood industry promotion) by Casey Jarman - Vol.4 #3.
- "Why is Seafood Quality Less Regulated than Meats or Poultry?" by W. Steven Otwell - Vol.6 #3.

Shrimping

- "Commercial Shrimpers May Be Excluded" (from shrimping north of Deer Island) by William Carter - Vol.1 #1.
- "Gulf Council's Shrimp Management Plan is Approved" by William Carter - Vol.1 #2.

State Departments - Alabama

- "Alabama's Department of Conservation and Natural Resources" by Tim Weeks - Vol.3 #1.
- "Alabama Department of Environmental Management" by ADEM staff - Vol.3 #4.
- "Wildlife Protection in Alabama" by David Sabine - Vol.5 #3.

State Departments - Mississippi

- "Department of Natural Resources" - Vol.2 #4.
- "The Mississippi Department of Wildlife Conservation" - Vol.3 #2.
- "Wildlife Management in Mississippi" by Louis Alexander - Vol.5 #3.
- "The Department of Archives and History: A State Resource" by Tatjana Adams and Cornelia Burr - Vol.5 #4.

State Legislation - Alabama

- "Leasing Alabama's Offshore Oil and Gas Tracts" by John Olmstead - Vol.3 #2.
- "Floodplain Management in Alabama" by Tim Weeks - Vol.3 #3.
- "Alabama Condominium Law" by Tim Weeks - Vol.4 #2.
- "Alabama Historic Preservation Law" by David Sabine - Vol.5 #1.
- "Good Samaritan Statutes: Protection or False Sense of Security?" by Robert O'Dell - Vol.6 #1.

State Legislation - Generally

- "The Uniform Condominium Act" by Tim Weeks - Vol.4 #2.
- "Federal Preemption of State Historic Shipwreck Policies" by Greg Winters and Cornelia Burr - Vol.5 #1.
- "Redfish Management in the Gulf: A Regulatory Challenge" by Robert O'Dell - Vol.6 #3.

State Legislation - Louisiana

- "Louisiana Redfish Laws" 1986 by Fred Whitrock and Mike Wascom - Vol.6 #3.

State Legislation - Mississippi

- "Recent Legislation" by Casey Jarman - Vol.1 #2.
- "Coastal Wetlands Protection Law Amended" by Cathy Jacobs - Vol.2 #2.
- "Recent Legislation" by staff - Vol.2 #3.
- "Leasing Mississippi's Offshore Oil and Gas Tracts" by Linda Marshal and Casey Jarman - Vol.3 #2.
- "Mississippi's Flood Control Legislation" by Catherine

- Mills - Vol.3 #3.
- "Mississippi Condominium Law" by Tim Weeks - Vol.4 #2.
- "Recent Legislation" by Casey Jarman - Vol.4 #3.
- "Mississippi Historic Preservation Law" by Catherine Mills - Vol.5 #1.
- "1985 Mississippi Water Law Amendments" by Al Sage III - Vol.5 #4.
- "Good Samaritan Laws: Protection or False Sense of Security" by Robert O'Dell - Vol.6 #1.
- "Recent Legislation" by Alan Evans - Vol.6 #3.

State Regulations (see individual topics in this index)

Treasure Salvors (see Admiralty Law)

Trespass Law

- "Recent Legislation - Mississippi" (posting private lands) by Casey Jarman - Vol.4 #3.

Water and Water Laws

- "Water Resource Management" (Mississippi) by Casey Jarman - Vol.3 #1.
- "Mississippi Surface and Groundwater Laws" by Casey Jarman - Vol.3 #1.
- "Proposed EPA Groundwater Policy" by David Sirera - Vol.3 #1.
- "Sporhase v. Nebraska Ex Rel. Douglas (Water as an Article of Commerce)" by Bo Bricklemeyer - Vol.3 #1.
- "Safe Drinking Water Act" by Cathy Jacobs - Vol.3 #1.
- "1985 Mississippi Water Law Amendments" by Al Sage - Vol.5 #4.

Waterfront Access (see Littoral Rights)

Waterways (see also Ports)

- "The Tennessee Tombigbee and the Courts" by Stanton Fountain - Vol.1 #3.
- "Summaries: Rivers and Harbors Act" by staff - Vol.2 #1.
- "Sea Grant Legal Program to Serve as a Clearinghouse" (Tennessee Tombigbee Waterway barge cargo regulations) by Cornelia Burr - Vol.4 #4.

Wetlands (see also Public Trust Doctrine and Coastal Zone Management)

- "Book Review" (Scheuler, Preserving the Pascagoula (River swamp)) by Casey Jarman - Vol.2 #2.
- "Cinque Bambini v. State of Mississippi and Mississippi Public Trust Doctrine" by Catherine Mills - Vol.2 #2.
- "Coastal Wetlands Protection Law Amended" by Cathy Jacobs - Vol.2 #2.
- "U.S. v. Riverside Bayview Homes" (filling of wetlands) by Louis Alexander - Vol.6 #1.
- "Recent Legislation - Mississippi" (leases of state owned wetlands) by Alan Evans - Vol.6 #3.

Whaling

- "Japan Whaling Association and Japan Fisheries Association v. American Cetacean Society" by Mellie Billingsley - Vol.6 #3.

Wildlife Protection and Management

- "The Mississippi Department of Wildlife Conservation" by MDWC staff - Vol.3 #2.
- "Lacey Act" (marketing of illegally taken fish and wildlife) by Casey Jarman - Vol.4 #1.
- "U.S. Fish and Wildlife Service" by staff - Vol.4 #2.
- "The Endangered Species Act" by Louis Alexander and Casey Jarman - Vol.5 #3.
- "The Marine Mammal Protection Act" by Louis Alexander - Vol.5 #3.
- "Wildlife Management in Mississippi" by Louis Alexander - Vol.5 #3.
- "The Evolution of Cooperation in Natural Resources Law: The Drifter/Habitue Distinction" by William H. Rodgers Jr., - Vol.6 #4.

Wreck Removal (see also: Admiralty Law)

- "The Wreck Removal Act of 1899" by Paul Gunn - Vol.2 #3.