Volume 13:2

NewsREEL

Fall 2013

A Newsletter for the Mississippi Bar Section on
Natural Resources, Energy and Environmental Law

CONTENTS

Comments, suggestions, contributions?
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NewsREEL
A Newsletter for the Section on Natural Resources, Energy and Environmental Law of the Mississippi Bar

U.S. Supreme Court Considers Logging Discharges Under the Clean Water Act

Catherine Janasie

In *Decker v. Northwest Environmental Defense Center*, the Supreme Court considered multiple questions concerning the application of the Clean Water Act to logging-related discharges. 133 S.Ct. 1326 (2013). First, the Court considered whether a citizen can challenge a National Pollutant Discharge Elimination System (NPDES) permitting rule in a citizen suit under the Clean Water Act, or if the challenge should have been brought under the judicial

continued on page 2

Message from Editors

We are excited to present our second newsletter for 2013. In this edition, we consider two recent U.S. Supreme Court decisions with the potential to impact Mississippi practice. The first case examines Clean Water Act discharges under the National Pollution Discharge Elimination System in the context of logging runoff. In the second, the Court looks at wetland permitting and the potential for permitting conditions to constitute a Fifth Amendment taking. Next, we turn to Mississippi's Above Ground Storage Tank Program. Lorin Washington, with the Mississippi Department of Environmental Quality, provides an in-depth look at the proposed program. Finally, the 2013 Legislative Session was a busy one. We conclude with a summary of new legislation passed this year.

Thanks to everyone who contributed to the newsletter. It would not be possible without volunteer authors from the Section. Please let us know if you have a topic idea or would like to contribute to the next edition.

Keith Turner, Niki Pace, & Catherine Janasie

review procedure of § 509 of the Act. Second, the Court decided whether discharges from logging roads are point source discharges that require a NPDES permit under the Act when the Environmental Protection Agency (EPA) has promulgated rules that it interprets as excluding these types of discharges from the permit program. *See Decker v. Northwest Environmental Defense Center*, 133 S.Ct. 22, 132 S.Ct. 865 (2012).

The Northwest Environmental Defense Center (NEDC) brought a suit against certain timber companies and Oregon officials, claiming that they were violating the Clean Water Act by not having a NPDES permit for discharging stormwater into the waters of the United States from ditches besides logging roads. The Ninth Circuit ruled that the ditches on the side of the logging roads were point sources under § 502(14) of the Clean Water Act, emphasizing that EPA did not have the authority to exempt certain discharges from the NPDES permit program if the discharge was from a point source under the Act. *Northwest Environmental Defense Center v. Brown*, 640 F.3d 1063 (9th Cir. 2011). Defendants argued that these discharges were exempt from the definition of point source under the Silvicultural Rule, which stated that silvicultural activity discharges from natural runoff were nonpoint source discharges, and thus, not point source discharges. The Ninth Circuit held that if natural runoff from silvicultural activities was later "collected and channeled in a system of ditches, culverts, and conduits before being discharged into streams and rivers," these were point source discharges under § 502(14).

However, the Supreme Court reversed this decision, deferring to EPA's interpretation of its regulations. The EPA had determined that its Industrial Stormwater Rule exempted the types of discharges at issue in this case – "discharges of channeled stormwater runoff from logging roads" – from the requirement to obtain a NPDES permit. The Court emphasized that when an agency has interpreted one of its regulations, the Court will defer to the agency unless the interpretation is "plainly erroneous or inconsistent with the regulation" (*quoting Auer v. Robbins*, 519 U.S. 452, 461 (1997)). The Court held that it was reasonable for EPA to conclude the Industrial Stormwater Rule only applied "to traditional industrial buildings such as factories and associated sights and other relatively fixed facilities."

In its decision, the Court also pointed out additional reasons for granting the EPA deference. First, the EPA has consistently taken the position that NPDES permits were not required for the types of discharges in this case – its position was not a deviation from its prior practices or "a *post hoc* justification adopted in response to litigation." *Id*. at 1337-38. Further, the Court pointed out that Oregon regulated "stormwater runoff from logging roads" so it would be reasonable for the EPA to conclude that federal regulation of this activity would be duplicative.

Also at issue in this case is whether NEDC could bring suit under the citizen suit provision of § 505(a) of the Clean Water Act, which allows any person to bring a suit against those who are illegally discharging pollutants into the waters of the United States without having a NPDES permit. However, § 509(b) limits the citizen suits that can be brought under § 505(a), as it requires that suits reviewing the actions of the EPA Administrator, such as the promulgation of the Silvicultural Rule, must be brought within 120 days, unless the reason for the suit came about after the 120 days have passed. If a person could have brought a suit under § 509(b), then the person cannot bring a citizen suit under § 505(a).

Here, the NEDC challenged the defendants' discharges without a NPDES permit, when the EPA believed a permit was not needed under the Silvicultural Rule, more than 120 days after EPA promulgated the rule. However, the Ninth Circuit found that NEDC was still able to bring a citizen suit because the basis for its suit arose after the 120 days. The court based this on the fact that the Silvicultural Rule was subject to more than one reading and EPA did not convey its reading of the rule, that defendants were exempted from getting a NPDES permit under the rule, until filing an amicus brief in this case.

The Court stated that citizen suits were not barred "when the suit is against an alleged violator and seeks to enforce an obligation imposed by the Act or its regulations." *Id.* at 1334. The Court found that this case was allowed since NEDC's claims were to enforce the requirements of a permissible reading of the Silvicultural Rule against an alleged violator. The claim was not a challenge to the rule itself "but to enforce it under a proper interpretation." *Id*. Here, NEDC has only asked the courts for a permissible reading of an ambiguous rule.

Finally, the Court held that this suit was not moot due to "the EPA's recent amendment to the Industrial Stormwater Rule." *Id*. at 1335. The Court based this holding on the fact that the defendants could be liable for discharges under the prior rule. Since the defendants could have to pay penalties for these past discharges, the new rule did not make the current case moot, as "the possibility of some remedy for a proven past remedy is real and not remote." *Id*. at 1335-36.

In a short concurring decision, Chief Justice Roberts and Justice Alito discussed how the parties in the case briefly raised reconsidering the principle of giving an agency deference when it is interpreting its own regulations that was set forth in *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410 (1945) and *Auer v. Robbins*, 519 U.S. 452 (1997). *Id*. at 133-39. Noting "[i]t may be appropriate to reconsider that principle in an appropriate case," the two justices stated that this was not the right case to do so since the issue was barely addressed or argued. "I would await a case in which the issue is properly raised and argued. The present cases should be decided as they have been briefed and argued, under existing precedent."

However, Justice Scalia issued a concurring and dissenting opinion on this point, in which he argued for abolishing Seminole Rock/Auer deference. Justice Scalia noted that this deference differs from Chevron deference, which gives an agency deference when it is interpreting ambiguous terms of a statute written by Congress. However, with Seminole Rock/Auer deference he reasoned that the agency is given deference for interpreting its own regulations, which puts too much power in one branch of government. In arguing against this type of deference, Justice Scalia wrote: "In any case, however great may be the efficiency gains derived from Auer deference, beneficial effect cannot justify a rule that not only has no principled basis but contravenes one of the greatest rules of separation of powers: He who writes a law must not adjudge its violation." *Id*. at 1342.


Photograph of the U.S. Supreme Courthouse, courtesy of Joseph A. Photography.

In the second part of his opinion, Justice Scalia then stated that this case should be decided "using the familiar tools of textual interpretation to decide: Is what the petitioners did here proscribed by the fairest reading of the regulations?" He then reasoned that based on the statute and regulations, these were point source discharges associated with industrial activity and that the 9th Circuit's decision should be upheld. *Id*.

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Land Use Permit Conditions Must be Proportional with Effects of Proposed Use

Ryan J.F. Pulkrabek

Photograph of the Wakodahatchee Wetlands at Delray Beach, Florida, courtesy of Lisa Jacobs.

The United States Supreme Court recently sent a Florida case back down to the lower court to determine whether a government agency placed unreasonable demands on a Florida landowner seeking to obtain a land development permit. The opinion expanded two previous Supreme Court opinions, *Nollan* and *Dolan*, to require that certain monetary exactions have a "nexus" and "rough proportionality" to a projected use of a property. Further, the Court held that when an agency denies a land use permit because a property owner did not agree to certain conditions, the denial is subject to a Fifth Amendment takings claim. While this decision was met with strong dissent, the implications are clear: government agencies imposing exactions or conditions for land development permits may face higher scrutiny.

Offset Requirements for Wetlands

Coy Koontz, Sr. sought to develop the northernmost 3.7-acre section of his 14.9-acre property located east of Orlando. Because this section of his property is a wetland, Florida law required that Koontz obtain a Wetlands Resource Management permit under the Warren S. Henderson Wetlands Protection Act and a Management and Storage of Surface Water permit under the Water Resources Act to develop it. *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2592 (2013). Pursuant to the Wetlands Protection Act, the St. Johns River Water Management District, the District with jurisdiction over Koontz's proposed development, required that permits could only be obtained by offsetting the resulting environmental damage of the development. To offset the environmental effects of his proposed development

on the 3.7-acre section, Koontz offered to deed a conservation easement on the remaining 11.2 acres, about three-quarters of his property, to the District.

The District, however, refused Koontz's offer. The District made a counter-offer asking that Koontz reduce the size of his development to one acre and deed a conservation easement to the District on the remaining 13.9 acres. The District suggested that Koontz could reduce the development area by taking measures that were ultimately more costly, i.e. replacing the dry-bed pond with a more costly subsurface stormwater management system and installing retainer walls rather than gradually sloping the land. *Id.*

Alternatively, if Koontz wished to pursue development of the entire 3.7-acre section, the District demanded that he offset the development by hiring contractors to make improvements to District-owned wetlands several miles away or by offering an equivalent mitigation project elsewhere. *Id.* at 2593. Both of these alternatives required that Koontz pay a "monetary exaction," a cash payment to develop on his property. Koontz believed these demands were too lofty in comparison to the environmental effects of his proposed development and sued under Florida law for money damages alleging that the District's demands constituted a taking of his property without just compensation. *Id.*

Nollan and *Dolan*

The Fifth Amendment bars the government from taking possession of a person's property without just compensation, referred to simply as a "taking." The United States Supreme Court set the framework for determining whether an exaction constitutes a taking in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Under *Nollan* and *Dolan*, the government may condition permit approval on the taking of land for public use "so long as there is a 'nexus' and 'rough proportionality' between the property that the government demands and the social costs of the applicant's proposal." *Koontz*, 133 S. Ct. at 2595. The "essential nexus" test from *Nollan* requires that conditions placed on permits by governmental entities must serve "the same governmental purpose as the development ban" or else the condition is a taking. In addition to the "essential nexus" test, the Court in *Dolan* required a "rough proportionality" between the proposed development's impact and the condition. The government need only offer one alternative that satisfies the nexus and rough proportionality standards to meet the *Nollan* and *Dolan* requirements. *Id.* at 2598.

The case was originally filed in the local circuit court, which held that the District's actions were unlawful because there was not a nexus or rough proportionality between the property that the government demanded and the social costs of the applicant's proposal. The state district court affirmed, but the Florida Supreme Court reversed. Since the District never issued Koontz a permit because he failed to meet their demands, the court reasoned that there could not have been an exaction since there was no actual taking of Koontz's money or property. *St. Johns River Water Mgmt. Dist. v. Koontz*, 77 So. 3d 1220, 1230 (Fla. 2011). Further, the court distinguished monetary demands from real property demands, holding that the monetary demands could not give rise to a claim under *Nollan* and *Dolan*. In *Nollan* and *Dolan*, the takings claims were based on the government conditioning building permits on the dedication of land. The United States Supreme Court granted the petition for a writ of certiorari, in part, to resolve whether monetary demands are distinguishable from real property demands under *Nollan* and *Dolan*.

A Taking for Permit Denial?

The United States Supreme Court first had to determine whether *Nollan* and *Dolan* apply if a permit is never granted because of the owner's refusal to agree to the proposed conditions. The Court explained that because a gratuitous benefit (the permit) was withheld for failure to meet a condition, the unconstitutional conditions doctrine was triggered. The unconstitutional conditions doctrine prevents the government from impermissibly burdening the right not to have property taken. *Koontz*, 133 S. Ct. at 2590. Although no property was actually taken from Koontz,

the Court found that conditioning a permit approval on forfeiture of a constitutional right alone is both a taking and a cognizable injury. As a caveat, the Court noted that were a permit application denied outright with no condition ever imposed, there would be no taking; however, where the government withholds the benefit for failure to give up a constitutional right, a taking has occurred and a valid claim under *Nollan* and *Dolan* can be made, as this triggers the court's policy objective to prevent governmental entities with greater leverage from making extortionate demands. *Id.* at 2596.

Monetary Exactions

The Florida Supreme Court had found, and the dissent agreed, that a monetary exaction could not constitute a basis for a takings claim. However, the majority in *Koontz* disagreed and held that monetary exactions must meet the *Nollan* and *Dolan* nexus and rough proportionality requirement because they are the "functional equivalent" of other land-use exactions, i.e. the District could simply demand the same amount of money as the land-use easement is worth and arrive at the same result. *Id.* In other words, *Nollan* and *Dolan* apply when a permit is conditioned on the payment of money by the permit-seeker. Justice Kagan, in her dissent, opined, "[A]n obligation to spend money can never provide the basis for a takings claim." *Id.* at 2599. While a monetary exaction is not a classic taking in the sense that no land forfeiture is required, the majority noted that there is a "direct link between the government's demand and a specific parcel of real property." *Id.* For Koontz to develop his 3.7-acre section of land, he would have to pay the District's monetary exaction, a link that the majority viewed as implicating the key concern of *Nollan* and *Dolan* that the government may use its leverage in land use permitting to extract disproportionate benefits that minimize the value of the owner's property without just compensation. Therefore, the Supreme Court held that monetary exactions as a condition to a land use permit must have an essential nexus and rough proportionality with the harm the development will cause.

Photograph of a roseate spoonbill on the Green Cay Wetlands in Florida, courtesy of Lisa Jacobs.

Conclusion

The U.S. Supreme Court expanded the *Nollan* and *Dolan* nexus and rough proportionality tests to encompass government demands for property as a condition to obtaining a land use permit even if the permit is denied. These tests thus apply to permit denials in the same way as they apply to permits that have been granted with conditions. The Supreme Court also expanded *Nollan* and *Dolan* to encompass land use permits that demand a money exaction, as opposed to only those conditions that involve a physical taking or permanent invasion of the land. The Supreme Court sent Koontz's case back to the lower court for further determination as to whether the District's demands meet the *Nollan* and *Dolan* tests. On remand, the parties will present arguments as to whether District's demands had the required essential nexus and rough proportionality to the environmental harm that Koontz's development would cause.

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A Benefit to Match the Burden: The New Aboveground Storage Tank Program

Lorin Washington

A proposed program regulating existing and new aboveground storage tanks (ASTs) could balance the existing financial burden on AST owner/operators by providing a uniform compliance program that would help eliminate and mitigate possible releases of petroleum products. This program would also provide AST owners with the ability to access the Mississippi Groundwater Protection Trust Fund to assist with cleanup expenses.

An Aboveground Storage Tank (AST) system is any one or more containers that routinely holds petroleum product (i.e. motor fuels), the total volume of which, including any connected piping, is more than ninety percent (90%) above the surface of the ground. These tanks are currently regulated by a non-uniform system of national, state, and local requirements throughout the state of Mississippi. The proposed Mississippi Aboveground Storage Tank Act seeks to provide a uniform regulatory scheme for ASTs across the State and to balance the existing financial obligation with the benefit of access to the Mississippi Groundwater Protection Trust Fund (Trust Fund) to assist with clean up costs associated with confirmed releases from AST systems.

Current Regulation of ASTs

Not all aboveground tanks have designation as an "AST." Tanks that are exempt from this designation are: Underground Storage Tanks (USTs) as defined in Miss. Code Ann. § 49-17-403; farming, agricultural, residential, or construction tank systems; any tank holding product not intended for commercial resale; temporary bulk storage of motor fuels at bulk terminals; heating oil tanks; septic tanks; pipeline facilities; surface impoundments, pits, ponds, or lagoons; storm water or waste water collection systems; flow-through process tanks; tanks systems otherwise regulated; and piping connected to any of the above exemptions.

The current requirements for AST systems in Mississippi vary to some degree by locality. Both the Environmental Protection Agency (EPA) and local fire departments outline regulations for AST systems. This leads to inconsistencies in the state as to how ASTs are regulated. The EPA requires a Spill Prevention, Control, and Countermeasure (SPCC) Rule, which outlines basic guidelines for spill prevention, spill preparedness, and spill response to prevent and mitigate possible releases. Examples of the information a SPCC plan requires are:

> (ii) Discharge prevention measures including procedures for routine handling of products (loading, unloading, and facility transfers, etc.); (iii) Discharge or drainage controls such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge; (iv) Countermeasures for discharge discovery, response, and cleanup (both the facility's capability and those that might be required of a contractor); (v) Methods of disposal of recovered materials in accordance with applicable legal requirements; and (vi) Contact list and phone numbers for the facility response coordinator, National Response Center, cleanup contractors with whom you have an agreement for response, and all appropriate Federal, State, and local agencies who must be contacted in case of a discharge as described in § 112.1(b).

General requirements for Spill Prevention, Control, and Countermeasure Plans, 40 C.F.R. § 112.7(a)(3)(ii)-(vi) (2010). Although these national requirements are mandatory, local fire departments can vary in their local fire protection requirements. Many still use portions of the National Fire Protection Association Rules for fire prevention, but in Mississippi the prevailing code is the International Fire Code. An owner of an existing AST would have to check with their governing entity to ensure compliance with the local rule of law as there is no existing state requirement for installation, operation and maintenance monitoring, or closure of AST systems.

The lack of consistency in AST regulation is different than the approach taken with Underground Storage Tanks (USTs). Since the inception of the UST program in 1988, regulatory requirements have continued to increase at a steady pace to make the systems more protective of human health and the environment. With the most recent addition of compliance mandates to UST systems introduced by the Energy Policy Act of 2005, 42 USC §13201 et seq. (2005), which made items such as overfill prevention, spill prevention, shear valves, and operator training mandatory for USTs, there has been a trend in owner/operator choice to switch to ASTs, which presently lack the compliance mandates of USTs. Consequently, as the number of ASTs increases, so does the possibility of a release that could endanger human health and the environment. Moreover, ASTs are actually more susceptible to release because they have greater exposure to environmental elements (i.e. wind, rain, hurricane, etc.), users of the system (i.e. drivers of automobiles), curious children (i.e. attractive nuisance), and other dangers. In comparison, USTs are fully submerged in the subsurface and shielded from most contact.

In spite of the increased risk associated with ASTs, a number of states, such as Georgia and Alabama, have no specified AST program, but these states have begun to include ASTs in their Groundwater Protection Trust Funds to account for the possibility of releases from these systems. Other states, such as Texas and California, as vigilant stewards of human health, the environment, and their respective trust funds, have gone further in realizing the nexus between exposure and possible release. These states not only include ASTs in their trust fund allocation, but also operate a fully encompassing program to provide for the installation, registration, maintenance & repair, and closure of AST systems.

Proposed Changes

Considering the current trend in regulation and behavior of the regulated community, the Mississippi Petroleum Marketers (Marketers) approached the Mississippi Department of Environmental Quality (MDEQ) with a request to "rethink" the existing approach to ASTs in the state. After much discussion, the Marketers and MDEQ designated the following goal—to create a uniform system of compliance requirements throughout the state that would balance the existing financial burden with a benefit that would encourage compliance. The AST bill would develop one checkpoint for owners and operators to ensure they were in compliance. It would also help to unify installation and maintenance practices throughout the state and eliminate the hodgepodge of requirements and practices that currently exist. The proposed legislation would also provide tank owner/operators with one standard for cleanup and assessment for petroleum storage tanks, as well as financial assistance, in the event of a confirmed release at AST sites.

In proposing the suggested regulation, the Marketers and MDEQ looked to the Mississippi Underground Storage Tank Act, the Mississippi Groundwater Protection Trust Fund, and existing rules as a template for a possible AST program. The current UST program covers every aspect of operation of the UST system including: licensing of contractors; notification requirements for installation, closure, and repairs; required record keeping (monthly monitoring records, annual records, and triennial records); leak detection (annual and monthly testing, such as automatic line leak detection and monitoring well records); leak prevention measures (equipment installation and testing, such as cathodic protection and overfill & spill prevention); cleanup measures in the event of a confirmed release; and payment of annual tank fees. The proposed AST regulations would likely include similar measures for existing and new AST systems.

Similar to the UST program, there will be restrictions to inclusion into the AST program. As previously stated, farm tanks, septic tanks, heating oil tanks, flow-through process tanks, storm water tanks, and tanks that are otherwise regulated would be exempt under the new regulation. The main emphasis of the program is to regulate commercial resale tank systems, which generally come into contact with large portions of the population (i.e. gas stations). The high possibility of contact, the high volume of traffic, and

the exposed tank system combine for an elevated possibility of a release and are the reason for their proposed regulation. The other tanks are exempted because they do not routinely store petroleum product (motor fuels) or they are primarily employed for personal use (i.e. septic tank, heating oil tanks, etc.).

A noted difference from the UST Program in the proposed AST program would be the creation of an Advisory Council (similar to that in place for Title V Air Fees). This Council would set AST tank fees annually, with a minimum of $500 and a maximum of $1,000 per tank compartment per year, to help fund the program. This fee is somewhat higher than the UST fee because a smaller number of ASTs will be regulated in comparison to the vast amount of USTs present and anticipated in the state.

While this may seem like a financial burden for owner/operators of ASTs, it has an extremely high payoff. Under the existing framework, distributors or suppliers to AST owners/operators pay the same Environmental Protection Fee as distributors or suppliers to UST owners/operators to fund the Trust Fund. The Environmental Protection Fee is a four-tenths of one cent per gallon fee paid on petroleum products including gasoline, jet fuel, diesel fuel, and fuel oil. It is collected by the Petroleum Tax Bureau of the Department of Revenue and is deposited into the Trust Fund. When the balance of the Trust Fund reaches or exceeds its statutory ceiling of ten million dollars ($10,000,000), the fee is abated until the fund reaches its statutory floor of six million dollars ($6,000,000), at which point the fee is imposed until the ceiling is reached once again. Miss. Code Ann. § 49-17-401 *et. seq.* Mississippi Underground Storage Tank Act of 1988. These ceiling and floor values are in place to make sure the Trust Fund remains solvent, but also to make sure that the regulated class may receive some relief when the Trust Fund has been deemed fully funded.

The UST program allows UST owners/operators, in substantial compliance with all rules and regulations at the time of a confirmed release, to access the Trust Fund to assist with associated assessment and cleanup costs that can easily exceed one million ($1,000,000) over the life of the remediation. However, AST owners and operators do not presently have a mechanism available to them to access the capital in the Trust Fund in the event of a release. This currently places the entire burden of cleanup expenses on the owner and/or operator. With the implementation of this program, AST owners would have the opportunity to "tap into" the Trust Fund and gain valuable assistance in their most critical time of need, up to $1.5 million per release in associated cleanup costs.

Access to the Trust Fund would not only provide financial assistance for assessment and remediation, but would more importantly grant the AST owner/operators the ability to use the MDEQ staff's expertise in navigating the various steps of the cleanup process as existing UST owner/operators do at the present time. AST owner/operators would have the assistance of trained personnel to educate them on what to expect during a Preliminary Investigation, in determining whether excavation or additional treatment systems would be required, in deciding which remediation/treatment system would work best at their location, in making improvements to their SPCC plan, and with addressing the concerns of adjacent land owners that may have been effected by the release.

Conclusion

The "new benefit to match the burden" not only provides a consistent regulatory scheme that is feasible and proven in our State, as well as other states, but it provides a much needed form of assistance to a community that could very well be bankrupted in the event of a catastrophic release of product without the assistance of the existing solvent Mississippi Groundwater Protection Trust Fund. This is a wonderful example of industry and government identifying a problem and coming together to cultivate a solution that will work in the immediate present and for years to come. And that is a resolution built to stand the test of time.

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2013 Legislative Summary

Below are summaries of enactments by the 2013 Legislature that may be of interest to SONREEL members. These summaries include bills passed and appointments to various state environmental councils. To view the full text of a bill, visit http://billstatus.ls.state.ms.us/ and choose "Bill Status" from the left-hand column.

AGRICULTURE

HB 718 - Interagency Farm to School Council Established

Creates an interagency Farm to School Council to facilitate the procurement and use of locally grown and locally raised agricultural products in school meals in order to improve the quality of food served in schools and to support the state economy by generating new income for Mississippi farmers. Approved by Governor, March 26, 2013.

SB 2436 - Emerging Crops Program

Removes the reversionary language on a provision in the Emerging Crops Fund that establishes a loan program for certain agribusinesses or greenhouse production horticultural enterprises. Approved by Governor, March 20, 2013.

SB 2553 - Agriculture

Exempts cottage food production operations from regulation. Approved by Governor, April 1, 2013.

CONSERVATION (HOUSE)/ ENVIRONMENTAL PROTECTION (SENATE)

SB 2688 - Environmental Quality

Removes the opt-out provision for certain lead-based paint activities under the state "Lead-Based Paint Activity Accreditation and Certification Act" to comply with federal requirements. Approved by Governor, March 14, 2013.

SB 2754 - Environmental Quality

Requires the Department of Environmental Quality to maintain a directory of certified electronic recyclers and requires state agencies to use certified electronic recyclers for disposal of e-waste and recyclable electronic equipment. Approved by Governor, March 18, 2013.

ENERGY

HB 1266 - Energy

Requires major facility projects to be designed and constructed to meet or exceed certain energy standards of ASHRAE or any more stringent code adopted by DFA, Bureau of Building, Grounds and Real Property Management. Approved by Governor, April 23, 2013.

HB 1281 - Energy Efficiency Standards

Revises the energy efficiency standards for commercial buildings. Approved by Governor, April 23, 2013.

HB 1296 - Energy Sustainability and Development Act

Creates the Energy Sustainability and Development Act. Approved by Governor, April 23, 2013.

HB 1698 - Severance Tax

Reduces the severance tax on oil and natural gas

produced from horizontally drilled wells or horizontally drilled recompletion wells from which production commences from and after July 1, 2013, for a period of 30 months beginning on the date of first sale of production. Approved by Governor, April 23, 2013.

SB 2564 - Energy Infrastructure Revolving Loan Program

Revises the definition of "project" within the Energy Infrastructure Revolving Loan Program and provides that the fund may be used to assist energy-providing utilities. Approved by Governor, April 24, 2013.

MARINE RESOURCES

HB 1072 - Mississippi Territorial Waters

Defines the limits and boundaries of the territorial waters of the State of Mississippi. Approved by Governor, March 20, 2013.

SB 2580 - Marine Resources

Authorizes the Commission on Marine Resources to require completion of educational programs for commercial licenses. Approved by Governor, March 25, 2013.

HOUSE PUBLIC UTILITIES COMMISSION

HB 894 - Public Service Commission

Permits the establishment of multi-year rate recovery plans for certain new electric generating facilities. Approved by Governor, February 26, 2013.

HB 1134 - Mississippi Public Utility Rate Mitigation and Reduction Act

Creates Act. Approved by Governor, February 26, 2013.

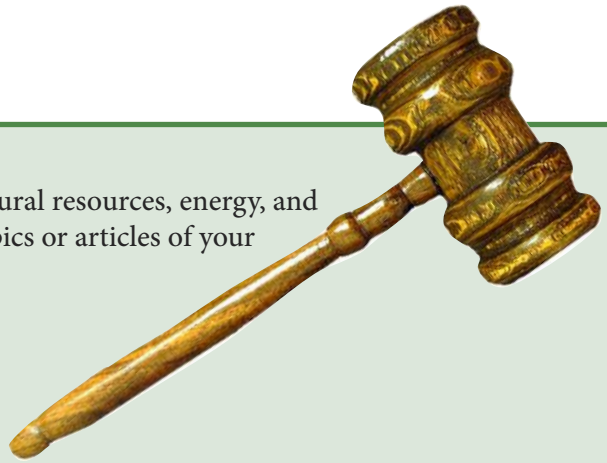
HOUSE WAYS AND MEANS

HB 841 - Sales Tax

Reduces rate on sales of power and fuel to a producer of oil and gas for use in oil recovery or sequestration of carbon dioxide. Approved by Governor, March 7, 2013.

HB 1685 - Mississippi Alternative Fuel School Bus and Motor Vehicle Revolving Loan Fund

Creates and authorizes issuance of bond for the program. Approved by Governor, April 23, 2013.



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NewsREEL is a newsletter reporting on legal issues affecting natural resources, energy, and the environment in Mississippi. We welcome suggestions for topics or articles of your own for NewsReel.

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