JENNER&BLOCK

Environmental, Energy and
Natural Resources Law Practice

Land, Air and Water News

WINTER 2002

EMF Conflicts in Toxic Torts, Property Transactions and Insurance

There is a growing public concern that electromagnetic fields ("EMF") have caused personal injury or property damage. That concern is expressed in toxic tort litigation, commercial property transactions, and insurance considerations. The prudent business manager must understand this conflict, what prompts people to act, what kind of activities or products can prompt EMF conflicts, and what to do to reduce the risks of an EMF conflict.

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Wherever there is electric power, electric and magnetic fields are produced by that power. Where the power source is direct current, such as industrial electroplating or batteries, the electric and magnetic fields are independent. However, the electric current in electric generating plants, electric transmission lines, factories, businesses and homes is alternating current: current that varies with a frequency of 60 cycles per second (60 Hz.). Alternating current generates electromagnetic fields. Commonly, EMFs are defined as electromagnetic fields with frequencies from 0 to 300 GHz. Electric fields are typically measured in Volts per meter ("V/m"), and typical exposures at the home and workplace are from 5 to 10 V/m. Electric fields at ground level under a power transmission line may be 10,000 V/m. Transmission line workers may be exposed to values from 50 to 5,000 V/m. Magnetic fields are measured as magnetic flux density, expressed in microtesla ("T"), and typical magnetic field exposures at the home and office range from 0.01 to 0.08 T.

Clearly, a large number of people perceive EMFs as a potential risk. In 1999, *USA Today* conducted a survey of 4,567 readers and reported that EMF's are the number one environmental concern in America. On August 25, 2000, *ZD Net*, a popular electronic technology news magazine, published an article entitled, "Is Your Cell Phone Frying Your Brain?" ZD Nets users were asked, "Do you think cell-phone use is hazardous to your health?" Of the 11,000 people responding, 54% said yes, 24% said no, and 23% said they would wait for completion of the government studies before deciding. Nearly every month some major newspaper or periodical has a significant article on possible links between EMFs and an adverse health impact. The EMF conflict has a broad scope, including litigation, property transactions, and insurance coverage issues.

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Most EMF litigation includes personal injury claims or claims of property damage or devaluation, and is therefore properly categorized as a type of toxic tort action. Personal injury claims based on EMF exposure have not fared well in the courts, largely because no one has presented persuasive scientific evidence that EMFs cause particular adverse health effects. Property damage claims have been much more successful in the courts. Most of the property claims have asserted that EMFs have diminished the value of the property, because the public fears regarding EMFs reduce the amount buyers will pay for property. The majority judicial view, called the liberal view, holds that landowners can be compensated for decreased valuation of their property due to public fears, whether that fear is reasonable or not. The leading explanation of the majority view, *San Diego Gas & Electric Co. v. Daley*, 253 Cal.Rptr. 144 (Cal.Ct.App.1988), involved a condemnation proceeding for construction of overhead power lines. The jury awarded the property owner $190,000 for the condemned property and $1,035,000 for the diminished value to the remaining property due to public fears from EMFs. The property owner prevailed on appeal and was awarded $486,066.68 in interest and in litigation expenses.

The intermediate view is exemplified by *Dunlap v. Loup River Public Power District*, 284 N.W. 742 (Neb. 1939), involving construction of an overhead power line on a farm. The Nebraska Supreme Court affirmed the award of damages, stating that while general fears should not be compensable, if the fears are reasonable and affect the price a purchaser of land is willing to pay, the loss should be compensable. Nearly all recent intermediate view case law has allowed diminished valuation damages for public fear of EMFs from power lines. Thus, the intermediate view provides the same result as the liberal view for such cases.

The minority (conservative) view holds that compensation for loss of value due to public fears is never compensable. See *Alabama Power Co. v. Keystone Lime Co.*, 67 So. 833 (Ala. 1914); *Central Ill. Light Co. v. Nierstheimer*, 185 N.E.2d 841 (Ill. 1962).; *Chesapeake & Potomac Tel. Co. v. Red Jacket Consol. Coal & Coke Co*., 121 S.E. 278 (W. Va. Ct. App. 1924). Most of the conservative view cases were decided before the current publicity and scientific studies regarding EMF, and the clear direction of recent court decisions is toward the majority view.

A more recent judicial development is the California Supreme Court's decision that utility laws preempt judicial evaluation of property devaluation claims from EMF. The Covalts sued San Diego Gas & Electric, which ran electric currents through power lines on adjacent property. The Court ruled that permitting such a cause of action would interfere with the Public Utility Commission's policy on powerline EMF, which would violate Public Utility Code section 1759. Therefore, in California, judicial evaluation of property value impacts from powerline EMF is preempted by the utility code. *San Diego Gas & Electric Co. v. Superior Court*, 13 Cal.4th 893, 55 Cal.Rptr.2d 724, 920 P.2d 669 (Cal Sup. Ct. Aug. 22, 1996). This effectively overruled the *Daley* case in California.

These property devaluation cases are important because of the significant potential impacts nationwide. In the July 1992 issue of *Science* magazine, one author estimated that "over one million homes and 10 million acres of land in the United States are sufficiently close to high-

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voltage transmission lines that levels of EMF exceed what is considered normal." A one percent loss in property value could result in $1 billion in damages. Roy W. Krieger, On the Line, *A.B.A. Journal*, Jan. 1994, at 40, note 7 at 45. Some property valuation experts have estimated the property devaluation from EMFs and power lines averages 20%. *The Philadelphia Inquirer,* Friday June 3, 1994, Section E, pg. 1. According to Susan Coveny, president of RE/MAX Prestige, a realty agency in Long Grove, Illinois, a home near a power line can sell for 30 to 35 percent less than a comparable house at some distance away. Gary Stix, "Are power-line fields a dead issue?" *Scientific American*, March 1998. Even without a claim of personal injury, damage awards can be quite high. In 1996, a New Jersey jury rejected the plaintiffs theory that EMFs caused his leukemia but still awarded a couple $762,524 for negligent infliction of emotional distress, trespass, inverse condemnation and nuisance resulting from the utilities construction and operation of an underground power line outside of the right of way. *John R. and Sandra H. Altoonian v. Atlantic City Electric Company*, No. CPM-L-1342-91; N.J Super., Cape May Co.

While most of the EMF litigation centers around overhead power transmission lines, there are other areas of growing litigation concern. Cellular telephone manufacturers have been a prime target. In *Verb v. Motorola, Inc.,* 284 Ill. App.3d 460, 220 Ill.Dec. 275, 672 N.E.2d 1287 (1996), appeal denied, 172 Ill.2d 568, 223 Ill.Dec. 201, 679 N.E.2d 386 (1997), a class of cellular telephone users brought an action against the manufacturer, claiming that their cellular phones should have been accompanied by warnings that use of the phones may cause an increased health risk, and that the design of cellular phones causes an increase in health risks to the plaintiffs. The court found that the Electronic Product Radiation Control Act, 21 U.S.C. § 260kk(a)(1) (1995), "preempt[ed] a state's power over the issues in the case. . . because the FDA directly regulates electronic products that emit radiation with regard to public health." 672 N.E.2d at 1293.

There are two important hidden aspects to past EMF litigation. First, nearly all prior cases have been filed against either public utilities or product manufacturers that are large, well-funded entities where EMFs are a central aspect of their products or activities. Realistically, these entities cannot settle a case claiming adverse health effects from EMF, or leave an adverse judgment unappealed, for fear that such action would prompt a flood of additional litigation. If plaintiffs commence actions against less well-funded companies or against entities where EMFs are only incidental to their operations, the results may be quite different.

Many large industrial facilities have substantial electrical distribution equipment within their facilities that produce EMFs. Commercial and residential property owners are responsible for the internal electrical systems, and the EMFs, within their premises. There are many small companies that manufacture products, such as electric blankets, that produce EMFs. Schools, in particular, may find it politically difficult to present an aggressive legal defense if they are charged with having high EMF levels in the classroom. If plaintiffs begin to focus on these entities, the defendants may not present as spirited or well funded a defense, or they may settle, or they may accept adverse lower court rulings. This could significantly change the character

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of the EMF case law. Second, EMF litigation is profoundly dependant upon the character of the most recent scientific studies on the health effects of EMF. Even a single reputable scientific study showing that EMFs are a direct cause of an adverse health effect could lead to an explosion in litigation.

Litigation is not the only area with significant conflicts relating to EMFs. Public concerns, including concerns from home owners, businesses, tenants and inside contractors have changed the way we address EMFs. Some people have added EMF contingency clauses to purchase or lease contracts. *The Philadelphia Inquirer,* June 3, 1994, Section E, pg. 1. Similar concepts are arising in the representations and warranties section of documents for industrial and commercial property transactions. These concerns have not been lost on the insurance industry. Most existing commercial general liability insurance policies are likely to cover EMF claims, but that position may be changing. Some insurers have recently excluded electric, magnetic, and electromagnetic radiation. Some insurance commentators have suggested that now is the time to act proactively, as with the Y2K problem, and amend insurance coverage forms so as to specifically exclude or limit coverage on claims arising from EMF exposure. David Thamann, "EMF Claims Could Still Overwhelm Insurers", 45 *National Underwriter Property & Casualty-Risk & Benefits Management* Vol 103, pg. 6 November 8, 1999.

There are several steps prudent business managers can take to minimize exposure to adverse publicity, vexatious litigation, and possible financial awards regarding EMFs. First, you should check your general liability and other insurance policies for coverage. If you transferred property to or from others, check the transactional documents or lease for provisions that might shift the risk to or from your operations. If you are not satisfied with your insurance coverage, find acceptable coverage before you proceed with other evaluations (and give serious consideration to "claims made" policy coverage).

If you are satisfied that you have appropriate coverage for any potential claims, you may wish to investigate the nature of any EMFs associated with your location, your business activities or your product. There are many competent consultants that can give an in-depth EMF report. Keep in mind, however, that you are developing information that may be subject to discovery in any future litigation. Therefore you may wish to contact legal counsel about having investigative studies conducted under the protections of the attorney-client privilege. Investigating the EMF values of your location, activities or products may help you avoid some nasty surprises. •

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Natural Resource Damage Assessments: What Rules Apply?

The natural resource damage assessment rules provide for the conduct of natural resource damage assessments under CERCLA and the Clean Water Act. 43 C.F.R. part 11. The rules are intended to be an instruction booklet for natural resource trustees about how to conduct a natural resource damage assessment in order to restore damaged natural resources. These rules have had a checkered history, and now have an even more uncertain future.

The Department of Interior ("DOI") promulgated regulations for natural resource damage assessments in 1986 and later revised them in 1988. These regulations were challenged in *Ohio v. United States Dept. of Interior*, 88 F.3d 1991, D.C. Cir. (1996), and, in 1991, DOI issued a new proposed rule to address the issues in the *Ohio* ruling. Then-President Bush signed the new rule in the waning days of his administration, but the rule was not published in the Federal Register before the Clinton administration took office. As a result, the Clinton administration withdrew the rule.

In 1994, DOI published a new final rule that again addressed the issues in the *Ohio* ruling, but with the Clinton, instead of Bush, imprint. This 1994 rule was challenged in *Kennecott Utah Copper Corp. v. United States Dept. of Interior*, 88 F.3d 1191, D.C. Cir. (1996), and although the rule emerged largely unscathed, the effect of striking down some of the rule's provisions resulted in Reagan-era provisions of the rule being reinstated. The Clinton DOI revised the rule, releasing a draft proposed rule in April 1999 ("Draft Proposed Rule"). Numerous stakeholders objected to the Draft Proposed Rule, including state governments, the Department of Energy and industry. DOI undertook once again to modify the rule, finalizing a draft that was sent to the Office of the Federal Register for publication at the end of the Clinton administration. The draft was not published before the current Bush administration took office, however, and President Bush withdrew it from publication. DOI did not circulate the revised version of the Draft Proposed Rule to stakeholders outside of government, so the content of the withdrawn Draft Proposed Rule remains uncertain.

As of the date this article went to publication, the Draft Proposed Rule remains under executive review. Career DOI employees are hopeful that the Draft Proposed Rule will emerge for publication in the form the rule was in as of January 2001; however, the main architect of the Draft Proposed Rule is no longer with DOI. Moreover, the fact that the Draft Proposed Rule is just a draft, decreases the likelihood that the Draft Proposed Rule will be published in the near future.

Given this history, there is understandable confusion on the part of trustees, responsible parties and other stakeholders as to what rules actually govern natural resource damage assessments. Moreover, with the *Ohio* and *Kennecott* decisions upholding and vacating portions of natural resource damage assessment rules, coupled with the Draft Proposed Rule's dissemination for two years, trustees' approaches to which rules apply reflect a hodgepodge of various Reagan era and Clinton era rules, and a guess at what the Draft Proposed Rule contained. This situation creates uncertainty, which often leads to disagreements about how natural resource damage assessments should proceed. These disagreements in turn add to the time it takes to assess and restore a resource, as well as to the transaction costs for government and responsible parties.

Current practice regarding natural resource damage claims

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illustrates that some of the concepts behind the Draft Proposed Rule already are creeping into the way that trustees handle natural resource damage claims. For example, trustees are making greater efforts to move more quickly toward restoration than in the past. Historically, responsible parties often complained that trustees spent too much time and money studying the alleged injury. All stakeholders should embrace efforts to restore natural resources sooner.

Cooperation among trustees and between trustees and responsible parties is very much a mixed-bag in the status quo. One need look no further than the Fox River case to see an example of a federal trustee, U.S. Fish and Wildlife Service, and a state trustee, Wisconsin Department of Natural Resources, who are not working together. Fortunately, the Fox River situation is atypical in terms of just how egregious the differences are between the federal and state trustees, but a lack of agreement between trustees about how to assess or restore natural resource damages is not unusual and actually interferes with the effort to assess and restore them.

Efforts by trustees and responsible parties to cooperate seem to be faring a little better. There is a growing recognition by both trustees and responsible parties as to the value of cooperating with each other. Greater cooperation increases the chances of global settlements, which responsible parties typically prefer, decreases all parties' transaction costs, and restores natural resources in a more timely and cost-effective manner. Despite these gains, mistrust between trustees and responsible parties remains. Some responsible parties fear that cooperating with the trustees will only give the trustees the research and information to make a better case against the responsible party.

The issue of how multiple releases and multiple party sites should be treated is already at issue within the natural resource damage community. This kind of a site, where many parties have had many releases that have impacted the natural resource, goes directly to a legal issue: does joint and several liability apply to natural resource damage claims? This legal issue is currently under consideration in *U.S. v. Asarco*, 214 F.3d 1104, (9th Cir. 2000), better known as the Coeur d'Alene case. In Asarco, many different responsible parties allegedly have contaminated for over 100 years the natural resources in the 1,500 square mile area of the Coeur d'Alene basin. The defendant mining companies filed pre-trial motions arguing that the joint and several liability standard the courts have found under CERCLA applies to Superfund only and not to natural resource damage claims, and that the injury to the natural resources is divisible and subject to apportionment. If the mining companies prevail on this argument, it will mean they will not have to pay for damage to natural resources that they did not cause, which is part of the recovery the government is seeking. To date, no federal court has ruled on whether joint and several liability applies to natural resource damage claims. As this article goes to publication, the Court has decided to withhold ruling on the argument until the issue of liability is determined at trial.

In conclusion, much uncertainty exists as to what rules govern the conduct of natural resource damage assessments. Consequently, anyone identified as a responsible party for a natural resource damage

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assessment and restoration needs to be realistic about the lengthy time required to resolve these cases and the many complex issues likely to arise in an effort to reach that resolution. •

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Please contact Lynn Grayson or Christy Picker for copies of our recent article: "The Business Dilemma: 21st Century Natural Resource Damage Liabilities for 20th Century Industrial Progress" by Lynn Grayson, Christy Picker, Steve Siros and Stacy Bettison, 31 ELR 11356 (Nov. 2001).

The article addresses natural resource damage claims at both the federal and state levels. The article provides practical insights into dealing with state and federal trustees through all portions of a natural resources dispute.

Developing Undeveloped Property: Make Sure You Do Your "Wetlands" Homework

The new year began on an encouraging note for owners of undeveloped property when, on January 9, 2001, the United States Supreme Court issued its decision in *Solid Waste Agency of Northern Cook County (SWANCC) v. United States Corps of Engineers*, 531 U.S. 159 (2001). In its sharply divided 5 to 4 ruling, the Supreme Court dramatically limited the jurisdiction of the Army Corps of Engineers to regulate and manage the nation's wetlands. In essence, the Court ruled that isolated, intrastate, non-navigable ponds, intermittent streams, or wetlands that were not adjacent to, or a tributary of, a navigable waterway were not subject to the "dredge and fill" regulations of §404 of the Clean Water Act ("CWA"), 33 U.S.C. §1344, and, thus, were not subject to the Corps' landfill permitting requirements when an owner or developer wanted to fill or dredge such water bodies. The Corps, prior to the Court's ruling in *SWANCC*, had taken the position, under its so-called "Migratory Bird Rule," that if migratory birds used such isolated water bodies, the Corps had jurisdiction over these water bodies to protect these habitats for migratory species. It reasoned that Congress intended the Corps to regulate these intrastate waters under the CWA and Congress had the authority to delegate this authority to the Corps under the Commerce Clause. The Court concluded, however, that Congress had not expressed any intent to extend the reach of the CWA over such intrastate waters and the Corps' decision to regulate such bodies had exceeded the Congressional mandate.

The impact of the Court's decision in *SWANCC* is potentially far-reaching. One estimate of the ruling's effect calculated that the decision removed anywhere from 30% to 60% of the country's wetlands from the Corps' jurisdiction. *See, The SWANCC Decision and State Regulations of Wetlands*, Jon Kusler, Association of State Wetland Managers, Inc. Specifically, within the Midwest, the Indiana Department of Environmental Management determined that the decision removed perhaps as much as 30% of the 800,864 acres of wetlands in Indiana from the permitting requirements of §404 of the CWA. *See* Section 401 Water Quality Certification Program Response to *SWANCC v. Army Corps of Engineers*, http://www.IN.gov/idem/water/planbr/401/SWANCC.html.

After the Court's publication of *SWANCC*, owners of undeveloped properties that

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contained isolated water bodies rejoiced. They believed the decision removed a substantial barrier to the development of their properties. No longer would they have to face the prospect of submitting an application to obtain a permit from the Corps under §404 of the Clean Water Act before they could fill or dredge the isolated wetlands on their properties. No longer would they have to face the risk that the Corps would reject the petition, as it had the petition of the Solid Waste Agency of North Cook County, because the proposed project would have an impact "upon area-sensitive species [that] was "unmitigable." 531 U.S. at 165. In short, they believed the Court in *SWANCC*, in one fell swoop, had removed a substantial impediment to the development of their properties.

Although the Court's decision in *SWANCC* was sweeping in its scope, the euphoria of owners of undeveloped property should be somewhat restrained. They may not be completely free to fill or dredge the isolated water bodies on their properties. These owners may have to obtain approval or authorization from a state or local agency before proceeding with development activities. Indeed, the Court in *SWANCC* reasoned that the Corps' interpretation of Congressional intent went too far and invaded the province of the states' authority to regulate property rights. Specifically, the Court wrote that:

> [W]here an administrative interpretation of a statute invokes the outer limits of Congress' power, we expect a clear indication that Congress intended that result. This requirement stems from our prudential desire not to needlessly reach constitutional issues and our assumption that Congress does not casually authorize administrative agencies to interpret a statute to push the limit of congressional authority. This concern is heightened where the administrative interpretation alters the federal-state framework by permitting federal encroachment upon a traditional state power.

531 U.S. at 172-73 [Citations omitted].

Some states, indeed, have exercised their sovereign powers and have implemented regulations that protect isolated wetlands. These states include Maine, Connecticut, New Hampshire, Rhode Island, Massachusetts, Vermont, New York, New Jersey, Maryland, Virginia, Florida, Minnesota, Michigan, Pennsylvania, and Oregon. *See SWANCC Decision and State Resolution of Wetlands*, Jon Kusler, Association of State Wetland Managers, Inc.

The nature and extent of the control these states exercise over isolated wetlands varies. Some of the states regulate isolated wetlands only if they exceed a certain size. Others will exempt the isolated wetlands from regulation if the fill or dredging activities are being conducted in conjunction with certain approved activities such as agriculture or silviculture operations. Other states regulate isolated wetlands in a cooperative relationship with local regulatory authorities. Regardless, however, of the manner in which these states regulate the isolated wetlands within their borders, the property owner who plans to develop property that contains such wetlands in these states must be mindful of the state's regulatory authority over isolated water bodies. The Supreme Court's *SWANCC* decision had no impact whatsoever on these state regulatory programs.

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The remaining 35 states provide little or no specific direct regulatory protection for isolated wetlands. However, even in these states, the owner of property containing isolated wetlands may not be free to fill or dredge such wetlands in developing his property. In some of these states, local governments may have adopted wetland protection ordinances, which should be reviewed before any dredge or fill measures are implemented.

In many of these states, isolated wetlands may be located in coastal areas and, thus, may be subject to coastal zone management statutes or programs or shoreline zoning statutes. These coastal and shoreline regulatory measures generally were implemented to preserve and protect coastal and shoreline areas from uncontrolled development. Isolated wetlands or water bodies certainly were not the focus or target of such measures. Nevertheless, the landowner certainly must review these measures before altering any such wetlands that are within a protected coastal management zone or shoreline zoning area.

In addition to coastal management zones and shoreline zoning areas, the states may attempt to implement regulatory measures to protect isolated water bodies pursuant to their delegated authority under §401 of the CWA, 33 U.S.C. §1341. Under §401, the states must certify that discharges into waters of the state comply with the CWA and its regulations before the discharger can be issued a permit for the discharging activity. This program is generally administered under the National Pollutant Discharge Elimination System, or NPDES program, as provided in §402 of the CWA, 33 U.S.C. §1342. Under the water quality program, any person that discharges any pollutant into a surface water must first obtain a NPDES permit from the EPA or the state that has received authority to administer the NPDES program, and the discharge must be in compliance with the limitations of the permit.

Indiana has been delegated the authority to administer the NPDES program to protect "the waters of the state." After the *SWANCC* decision, the Indiana Department of Environmental Management ("IDEM")

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New Electronic Newsletter

Jenner & Block's Environmental, Energy and Natural Resources Law Practice Group has started an electronic newsletter to keep clients and friends of the firm informed about new developments in the law. Our practice group circulates the E-Newsletter electronically on a monthly basis, with additional Client Alerts when a major new development occurs.

The best way to sign up for this E-Newsletter service is to go to our publications link under the Environmental, Energy and Natural Resources Law Practice at www.jenner.com. Alternatively, you can request to be added to the E-Newsletter mailing list by sending an e-mail to environment@jenner.com. We maintain our client and contact lists in a strictly confidential manner, and will not disclose the mailing list to any other persons. To unsubscribe from this service, send an e-mail to environment@jenner.com, with the word "unsubscribe" in the subject heading.

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announced that, with respect to isolated wetlands:

> *The SWANCC decision has no bearing on whether these water bodies are "waters" of the state subject to state law.* Therefore, isolated water bodies, including isolated wetlands, will not cease to be waters of the state simply because they are no longer waters of the United States. (Italics in original)

Memo of Lori F. Kaplan, Commissioner of the Indiana Department of Environmental Management of April 11, 2001, entitled "IDEM Actions Related to SWANCC Supreme Court Decision," Attachment 1.

To protect these "waters of the state," IDEM has taken the position that all waters of the state are subject to water quality standards and "discharges" of dredged or fill matter into an isolated wetland in Indiana are likely to be in violation of IDEM's water quality standards.

Finally, IDEM reminded the regulated community that:

> Indiana rules prohibit any discharge of a pollutant (which includes dredged or fill material) into waters of the state from a point source discharge (which includes bulldozers and backhoes) unless either the discharger has obtained an NPDES permit or an exclusion applies. One of the current exclusions is for discharges of dredged or fill material into waters of the state that are regulated under section 404 of the CWA. However, this exclusion does not apply to discharges into waters that are no longer subject to section 404 of the CWA. *Therefore, a discharge of dredged or fill material into the isolated waterbodies or isolated wetlands is subject to the prohibition on discharging without an NPDES permit.* (Emphasis added).

The *SWANCC* decision may have removed hundreds of thousands of acres of undeveloped properties from the jurisdiction of the Corps to regulate the dredging and filling of the isolated wetlands contained within these undeveloped properties. The decision, however, did nothing to restrict the jurisdiction of the states to regulate and protect isolated wetlands either directly, as part of a wetlands management program, or indirectly, a part of the states' sovereignty over coastal areas.

Moreover, the narrow support the majority opinion received from the justices of the Supreme Court is reflective of the sharp differences the citizens of this country have over the value of wetlands to protect and nurture native plant and animal species compared to the unfettered right of property owners to develop, and enhance the market value of, their undeveloped property. As a result, those state agencies that have the responsibility of protecting wetlands may implement creative measures to protect isolated wetlands from dredge and fill activities. Thus, an owner of undeveloped property would be wise to do his homework on the wetland regulatory program of the state in which the undeveloped property is located before dredging or filling the isolated water bodies on his property. •

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Counsel's Corner

On November 5, 2001, the Environmental Law Department was pleased to host the Air & Waste Management Association Program on Clean Air Act Initiatives in Region V. The program featured various industry and government speakers from USEPA and Illinois EPA. For further information, please contact Bill Forcade at 312-923-2964.

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In September 2001, Bill Forcade, Lynn Grayson and Steve Siros spoke at a combined Illinois State Bar Association, Chicago Bar Association Environmental Seminar on a variety of environmental topics.

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In January 2002, the Air & Waste Management Association will hold its annual Clean Air Act Program at a date and location yet to be determined. Please contact Lynn Grayson for further information at 312-923-2756.

◆

On February 5, 2002, Jenner & Block and the University of Illinois at Chicago - School of Public Health will co-host a seminar on "How to Master the Disaster" regarding management of public health community relations and legal consequences of toxic events. For further information, please contact Bill Forcade at 312-923-2964.

◆

In March 2002, we will co-host a seminar with the University of Illinois–School of Public Health on "How to Prevent the Event" regarding identifying and reducing the risk of toxic events and the resulting public health and legal consequences. For further information, please contact Bill Forcade at 312-923-2964.

The American Bar Association has appointed Lynn Grayson to the Editorial Board for the Natural Resources and Environment Journal of the ABA Section on Environment, Energy and Resources.

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For a thorough understanding of the Emergency Planning and Community Right to Know Act, please see Lynn Grayson's recent article "EPCRA Basics, Dos and Don'ts", published in the Natural Resource and Environment Journal of the ABA Section on Environment, Energy, and Resources (Summer 2001).

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For an interesting analysis of the interaction of environmental concerns and threats of terrorism, see Bill Forcade's article "Responding to the Terror Threat: The Environmental Component", Chicago Daily Law Bulletin, Lawyers' Forum, p. 5, (October 26, 2001).

◆

Jim Vroman recently published an article entitled "New RCRA Cleanup Reforms" in the Environmental Counselor, Issue No. 156, (August 15, 2001). Jim's article focuses on new techniques and programs to improve RCRA closure efficiency.

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Jenner & Block's Land, Air and Water News provides information on recent developments of interest in the area of Environmental Law to the Firm's clients and friends. Due to space limitations and the general nature of its contents, it should not be regarded as legal advice. We would be pleased to provide additional details or specific advice if desired.

Cover image from the Collection of the Supreme Court of the United States.