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Ocean and Coastal Case Alert

The National Sea Grant Law Center is pleased to offer the December 2014 issue of *Ocean and Coastal Case Alert*.

The Case Alert is a monthly newsletter highlighting recent court decisions impacting ocean and coastal resource management. (NSGLC-14-03-11).

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SUPREME COURT

***Michigan v. E.P.A.*, 2014 WL 3509008 (U.S. Nov. 25, 2014).**

The U.S. Supreme Court accepted cert for three petitions filed by the Utility Air Regulatory Group, a group of 21 states, and the National Mining Association. The petitions asked the court to review the Environmental Protection Agency's emissions standards for power plants. Specifically, the Court will consider "[w]hether the Environmental Protection Agency unreasonably refused to consider cost in determining whether it is appropriate to regulate hazardous air pollutants emitted by electric utilities."

[Docket Here](#)

FOURTH CIRCUIT

South Carolina

***Kiawah Dev. Partners, II v. S. Carolina Dep't of Health & Env'tl. Control*, 2014 WL 6976669 (S.C.**

Dec. 10, 2014).

The South Carolina Supreme Court issued a decision upholding the Department of Health and Environmental Control's (DHEC) decision to deny a permit for construction of a seawall over state tidelands. A real estate developer had applied for a permit to construct a bulkhead and revetment measuring nearly 3,000 feet long and 40 feet wide over state tidelands in order to facilitate a residential development. DHEC denied the majority of the requested permit, granting only a small portion to protect an existing county park. An administrative law court (ALC) disagreed and found a permit should be granted for the entire structure. On appeal, the South Carolina Supreme Court held that the ALC committed several errors of law and reversed its decision.

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FIFTH CIRCUIT

Louisiana

In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010, No. MDL 2179 (E.D. La. Nov. 10, 2014).

The U.S. District Court for the Eastern District of Louisiana rejected BP's motion to amend or alter a previous judgment finding the company grossly negligent for the Deepwater Horizon oil spill. BP argued that the court should not have allowed expert testimony that was outside of a report provided by the witness, which it claimed unfairly surprised and prejudiced the company. The court disagreed, noting that BP's counsel had opened the door to the testimony; therefore, the court rejected the company's motion.

Parish of Plaquemines v. Total Petrochemical & Ref. USA, Inc., 2014 WL 6750649 (E.D. La. Dec. 1, 2014).

Plaquemines Parish filed a lawsuit against 19 oil and gas companies seeking environmental damages appropriate under coastal zone management laws. The Parish filed in state court, but the action was removed to federal court. In November, a federal judge remanded the case to state court for lack of subject matter jurisdiction. The judge found that the defendants did not establish that the action was properly removed from state court under diversity jurisdiction, the Outer Continental Shelf Lands Act, maritime law, or because there was a federal question.

[Opinion Here](#)



SEVENTH CIRCUIT

Illinois

Smith v. Illinois Department of Natural Resources, No. 14-CH-711 (Ill. Cir. Ct. Nov. 21, 2014).

An Illinois court denied a preliminary injunction seeking to halt the enactment of the state's hydraulic fracturing rules. The Department of Natural Resources (DNR) promulgated the rules, which adopt a regulatory framework for

hydraulic fracturing, pursuant to its authority under the state's Hydraulic Fracturing Regulatory Act. Several Illinois landowners brought suit against the DNR, alleging that the agency failed to follow proper rulemaking procedures. The judge rejected the motion for a preliminary injunction, as the plaintiffs did not prove they were subject to irreparable harm. The court will decide the remaining claims at a later time.



D.C. CIRCUIT

Humane Soc'y of the United States v. Pritzker, 2014 WL 6946022 (D.D.C. Nov. 14, 2014).

The U.S. District Court for the District of Columbia ruled that the National Marine Fisheries Service (NMFS) must reconsider petitions to list the porbeagle shark as endangered or threatened under the Endangered Species Act. The groups that brought the petitions argued that NMFS improperly applied a more stringent standard than required when considering the petition. The court agreed, noting that during the initial step in the listing process, some level of uncertainty should not preclude the petition moving to the next stage of review. The court remanded the decision to NMFS, which will reconsider the petitions.

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FEDERAL CIRCUIT

Pioneer Reserve, LLC v. United States, No. 14-376C, 2014 WL 6536762 (Fed. Cl. Nov. 21, 2014).

The U.S. Court of Federal Claims rejected a motion to dismiss a breach of contract claim against the U.S. Army Corps of Engineers (Corps), finding that a wetlands mitigation bank "instrument" executed between a landowner and the Corps is a binding contract. After the Corps significantly reduced the number of credits available from the bank, the bank filed a lawsuit alleging breach of contract. The court found that since the instrument was a contract, it could be enforced against the Corps when it altered the terms of the instrument.

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