

allow DEQ to bypass the district courts. The constitution merely sets forth the state's general position towards environmental protection. It does not contemplate empowering the legislature to create new branches of the judiciary. Although exceptions to the district court's jurisdiction exist, these exceptions appear expressly in the text of the constitution.

The court also considered justifying the State's action under the public rights doctrine. When employed at a federal level this doctrine allows Congress to act outside the restriction of Article III of the U.S. Constitution and establish "legislative courts." The majority, however, decided that, as the state constitution provides a more detailed structure for the judiciary, allowing the legislature to create administrative agencies whose decisions will be accorded deference on appeal, there was no place for the public needs doctrine at a state level. Because the court found no need for the use of the doctrine and no express constitutional language which would allow the legislature to create statutory exceptions to the district court's grant of original jurisdiction, it decided DEQ's procedure for appeal was unconstitutional.

JULIANA MODAY

*In re CECOS International, Inc. Livingston Facility Permit Application No. LAD00618298*, 574 So. 2d 385 (La. App. 1st Cir. 1990)

The First Circuit Court of Appeal of Louisiana affirmed the Department of Environmental Quality's (DEQ) denial of a permit application by CECOS International, Inc. (CECOS), a hazardous waste treatment, storage, and disposal facility operator. The permit was denied by DEQ Secretary Paul Templet after a hearing which was requested by CECOS. At the conclusion of the hearing, the hearing officer recommended that the draft denial be withdrawn and that a draft permit be issued to CECOS. The Secretary overruled the hearing officer and denied the permit application.

CECOS appealed DEQ's denial of the permit application based on six general assignments of error. First, CECOS claimed that the Secretary used the wrong standard of review and that he could not reverse the hearing officer's findings of fact unless the officer committed manifest error. The court rejected this argument and held that the Secretary had the authority,

based on the administrative record, to overrule the decision of the hearing officer and render a contrary decision.

Second, CECOS alleged that the Secretary's findings concerning the geology of the site were manifestly erroneous, an abuse of discretion, and contained legal error. The court concluded that the Secretary's findings of fact were supported by the record and were not manifestly erroneous. Because there were two permissible views of the evidence supported by expert testimony in the record, the court found no abuse of discretion in the Secretary's exercise of his authority. The Secretary's choice of experts and his interpretation of the regulations regarding site geology were void of legal error.

Third, CECOS argued that the Secretary's findings concerning the facility's compliance history were manifestly erroneous, arbitrary, and improperly based on an earlier consent decree between CECOS and DEQ. The court noted that before the Secretary can grant a permit, he is required to review the applicant's compliance history. LA. REV. STAT. ANN. § 30:2014(A) (West 1989). Further, the court found that the consent decree between CECOS and DEQ contained no language that would bar review of the facility's compliance history by the Secretary.

Fourth, CECOS asserted that the Secretary failed to conduct the risk/benefit analysis required by *Save Ourselves, Inc. v. Louisiana Environmental Control Commission*, 452 So. 2d 1152 (La. 1984). The court noted that *Save Ourselves* does not require a particular type of risk/benefit analysis, nor does it require the Secretary to articulate and explain, in detail, the method of risk/benefit analysis he used to make his decision. The court determined that the Secretary's risk/benefit analysis was proper, reasonably discernable, and not an abuse of the Secretary's discretion in determining that the risk and gravity of the possible harm to the environment outweighed the social and economic benefits.

Fifth, CECOS contended that the 1983 permit issued to the facility was a final, standard permit that entitled CECOS to operate under that permit for ten years. However, the court noted that paragraph four of the 1983 permit stated that the facility was subject to the requirements of interim status standards. Therefore, the court held that the CECOS permit was an interim status permit.

Finally, CECOS claimed it was improper for the Secretary

to review the hearing officer's decision in a case in which the Secretary had made the initial decision to issue the notice of intent to deny the permit. However, CECOS only asked that the Secretary be recused from further participation in the proceedings if the Secretary's decision was reversed and remanded to the agency. Because the court affirmed the decision of the Secretary, it did not address the issue of the Secretary's recusal.

ASHLEY WADICK

*Cheramie v. J. Wayne Plaisance, Inc.*, 583 So. 2d 921 (La. App. 1st Cir. 1991)

In 1987, J. Wayne Plaisance Inc. (Plaisance) was developing plans for the stabilization of the Isle Dernieres Barrier Island System in Terrebonne Parish. Surveying was done in all-terrain vehicles which destroyed the nests, eggs, and young of various birds on the western island, and possibly drove away a pair of brown pelicans, a protected species in Louisiana. Plaintiff Cheramie, an employee of Plaisance, reported these acts to state wildlife officials, who asked the joint venture to cease the surveying operations until the damages could be assessed. When survey teams were nevertheless sent out on foot, plaintiff refused to go, telling his superiors that it was wrong, and possibly illegal, to continue. He was fired on the spot. Plaintiff filed suit, alleging that he was fired for reporting or complaining about possible environmental violations.

Louisiana Revised Statute, section 30:2027 provides that "No . . . employer . . . shall act in a retaliatory manner against an employee, acting in good faith, who reports or complains about possible environmental violations," and allows employees against whom such action is taken to bring a civil suit against the employer for treble damages. LA. REV. STAT. ANN. § 30:2027 (West 1989).

The trial court, interpreting the statute to require knowledge by the employer of a report or complaint to a governmental agency, dismissed plaintiff's case because it found that the defendants were unaware that plaintiff had reported them. Plaintiff appealed, contending that a violation of the statute occurs even where the employee complains of possible environmental violations only to his superiors and is fired. First Circuit, Judge Lottinger, did state that the statute will not protect an