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<td>Planning and Environment Act 1987</td>
<td>Challenge to construction permit provision</td>
<td>Provision amended</td>
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<td>(Victorian Civil and Administrative Tribunal [2009] VCAT 2231)</td>
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<td><strong>Thornton v. Adelaide Hill Council</strong></td>
<td>Australia</td>
<td>Suits against Governments: Environmental Assessment and Permitting: Utilities</td>
<td>Ecologically Sustainable Development (ESD) principles</td>
<td>Challenge to state council decision granting development consent for a coal-fired boiler</td>
<td>Appeal dismissed; court found no evidence of likely increase in GHG emissions</td>
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<td>(Environment, Resources and Development Court of South Australia, 2006)</td>
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<td>Case Name</td>
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<td>Turp v Minister of Justice</td>
<td>Canada</td>
<td>Suits against Governments: GHG Emissions Reduction and Trading</td>
<td>Kyoto Protocol</td>
<td>Application for Judicial Review challenging the Canadian Government’s decision to withdraw from the Kyoto Protocol</td>
<td>Application dismissed</td>
<td>Unknown</td>
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<tr>
<td>Veolia v Shropshire CC (Planning Inspectorate Decision, 2012)</td>
<td>United Kingdom</td>
<td>Suits against Governments:</td>
<td></td>
<td>Veolia sought planning permission for an energy-from-waste facility as an extension to an existing recycling center in Shropshire, England</td>
<td>Planning permission granted</td>
<td>Unknown</td>
</tr>
<tr>
<td>Wade v Warrnambool CC &amp; Anor (Victorian Civil and Administrative Tribunal, 2009)</td>
<td>Australia</td>
<td>Environmental Assessment and Permitting: Climate Adaptation</td>
<td>Planning and Environment Act 1987</td>
<td>Challenge to planning permit</td>
<td>Permit denied</td>
<td>Closed</td>
</tr>
<tr>
<td>Weaver v. Corcoran and Others (British Columbia Supreme Court, Canada, 2010)</td>
<td>Canada</td>
<td>Suits Against Corporations</td>
<td>Libel</td>
<td>Plaintiff seeks injunction against newspaper for publishing false, malicious and defamatory words.</td>
<td>NA</td>
<td>Claim filed</td>
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<tr>
<td>Case Name</td>
<td>Jurisdiction</td>
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<td>Principal Law</td>
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<td>West Coast Ent Inc v Buller Coal Ltd (Supreme Court of New Zealand 2013)</td>
<td>New Zealand</td>
<td>Suits Against Governments: Environmental Assessment and Permitting: Extraction of Natural Resources</td>
<td>Resource Management Act 1991</td>
<td>Appeal declaration finding that indirect greenhouse gas emissions should not be considered in resource consent applications</td>
<td>Denied</td>
<td>Unknown</td>
</tr>
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<td>Xstrata Coal Queensland Pty Ltd &amp; Ors v. Friends of the Earth - Brisbane &amp; Ors (Queensland Land Court, 2012)</td>
<td>Australia</td>
<td>Suits against Governments: Environmental Assessment and Permitting: Extraction of Natural Resources</td>
<td>Mineral Resources Act 1989 (Qld) and Environmental Protection Act 1994 (Qld)</td>
<td>Challenge to approval for the coal mine on the basis that the emissions from the use of the coal would contribute to climate change</td>
<td>Application dismissed</td>
<td>Appeal considered then withdrawn. Closed.</td>
</tr>
<tr>
<td>Yelland Wind Farm Ltd. v. West Devon BC (Planning Inspector Decision, 2007)</td>
<td>United Kingdom</td>
<td>Suits against Governments: Environmental Assessment and Permitting: Renewable Projects</td>
<td>Planning Policy Statement 22 (PPS22)</td>
<td>Appeal of local council decision denying planning permission for wind turbines</td>
<td>Appeal dismissed</td>
<td>Closed</td>
</tr>
<tr>
<td>Your Water Your Say Inc v Minister for the Environment, Heritage and the Arts (Federal Court of Australia, 2008)</td>
<td>Australia</td>
<td>Suits against Governments: Environmental Assessment and Permitting: Utilities</td>
<td>Environmental Protection and Biodiversity Conservation Act 1999</td>
<td>Challenge to federal agency decision to exclude certain environmental assessments in approving a desalination plant proposal</td>
<td>Application dismissed</td>
<td>Appealed</td>
</tr>
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</table>
Bundes fur Umwelt und Naturschutz Deutschland e.V. & Germanwatch e.V. v. Bundesrepublik Deutschland, vertreten durch Bundesminister fur Wirtschaft und Arbeit

Berlin Administrative Court (2006), \textit{VG 10 A 215.04}

A German court ordered the government to release information on the climate change impacts of German export credits. The credits have provided financial support for projects that contribute to climate change. BUND and Germanwatch brought suit against the government arguing that citizens have a right to the free access of environmental information under the German Access to Environmental Information Act (UIG). The court, in granting the application, rejected the argument that information on German export credit activities did not constitute “environmental information” within the meaning of the UIG and could not potentially affect elements of the environment, such as climate change.

Additional Information:

Click here for Decision

http://www.law.columbia.edu/centers/climatechange
Cemex UK Cement Ltd v. Department for the Environment, Food and Rural Affairs

Queen’s Bench Division, Administrative Court (2006), [2006] EWHC 3207 (Admin)

A United Kingdom court dismissed an action by a cement company, which asserted that a change in the commissioning rule during Phase II of the National Allocation Plan (NAP) seriously disadvantaged one of its plants, violating the principle of equity. The court held that there was inevitably an element of “rough justice” in the commissioning rule and there is no reason for unusually protracted commissioning difficulties at an individual cement factory to be treated any differently from other difficulties such as marketing, labor or management maintenance problems.

Click here for Decision

Additional Information:
An Australian state court upheld a state agency decision to approve a concept plan for a mixed-use development project. Applicant challenged the agency decision on three grounds, including the agency’s failure to consider ecologically sustainable development (ESD) principles in approving the concept plan under the Environmental Planning and Assessment Act 1979. The court held that the agency had considered ESD principles and greenhouse gas emissions when approving the project. A quantitative assessment of GHG emissions was not necessary in this particular case and is not required for every major project.

Click here for Decision
The New Zealand environmental court accepted the cumulative effects of greenhouse gas (GHG) emissions as a matter of serious concern in an application by Contact Energy for resource consent to construct and operate a 400 megawatt gas fired combined cycle power station in south Auckland. In granting consent for the power station, the Auckland Regional Council failed to impose conditions requiring mitigation of the emissions. The Environmental Defence Society appealed the council’s decision, seeking a declaration to require Contact Energy to offset the emissions by a program of forestry sequestration. Although the court accepted the scientific consensus on the contributions of GHG emissions to climate change, it dismissed the appeal, questioning the efficacy of imposing mitigation measures.
Friends of the Earth Canada v. The Governor in Council et al.

Federal Court (2008), 2008 FC 1183

A Canadian federal court dismissed an action by a not-for-profit organization alleging that the Canadian government had breached its duties under the Kyoto Protocol Implementation Act, 2007 (KPIA). Friends of the Earth Canada sought a declaration from the court that the government had failed to meet the legal requirements of the KPIA by missing deadlines and failing to publish regulations. The court ruled that the legislation is not justiciable. The court concluded that it had no role to play reviewing the reasonableness of the government’s response to Canada’s Kyoto commitments within the four corners of the KPIA.

In 2009, the Federal Court of Appeal affirmed the lower court’s decision, finding that there was no judiciable issue for the court to consider. The Supreme Court of Canada declined to accept the case in 2010.

Additional Information:

- Ecojustice press release (12/15/2009)
Gbemre v. Shell Petroleum Development Company of Nigeria Ltd et al.

Federal Court of Nigeria (2005)


Additional Information:
Genesis Power Ltd and the Energy Efficiency and Conservation Authority v. Franklin District Council

Environment Court (2005), [2005] NRRMA 541

New Zealand Environment Court granted consent for a wind farm. The Franklin District Council refused consent for the project on the basis that would have an adverse visual effect on the landscape, local community and equestrian activities. Proponents of the project cite reduction in emission of harmful greenhouse gases and a national need for sustainable and renewable energy sources as support for the project. The court determined that the purpose of the Resource Management Act 1991 would be better served by granting the wind farm proposal. The court found that the benefit of the wind farm proposal, when seen in a national context, outweighed the site-specific effects and the effects on the surrounding area. The court also rejected the council’s argument that because the wind farm was relatively small, its climate change benefits were not relevant.

Additional Information:

Click here for Decision
Gray v. Minister for Planning

Land and Environment Court of New South Wales (2006), 152 LGERA 258

An Australian federal court rejected an environmental impact assessment (EIA) prepared as part of a development approval process for a large open-cut coal mine at Anvil Hill. Coal from the proposed mine is destined for use in coal-fired power stations in Australia and overseas. The proponents of the project failed to consider the potential greenhouse gas (GHG) emissions from the burning of coal by third parties. The court held that for projects with the potential to directly or indirectly contribute to GHG emissions, the climate change impacts of the proposal should be properly considered and assessed under the Environmental Planning and Assessment Act 1979. It is not sufficient to simply raise the climate change issue in the EIA; the proponent of the project must attempt precise quantifications.

Additional Information:
Greenpeace Australia Ltd v. Redbank Power Co.

Land and Environment Court of New South Wales (1994), 86 LGERA 143

An Australian state court upheld a state council decision granting development consent for the construction of a power station. Greenpeace asserted that air emissions from the power station would exacerbate the greenhouse effect. Applying the precautionary principle, Greenpeace argued that the court should refuse development consent for the project. The court held that although application of the precautionary principle dictates a cautious approach in determining whether or not development consent should be granted, the principle does not require that the greenhouse gas issue outweigh all other issues.

Additional Information:

Click here for Decision
Heathrow Airport Ltd & Another v. Joss Garman & Others

Queen’s Bench Division (2007), [2007] EWHC 1957 (QB)

A United Kingdom court granted injunctive relief to control a probable campaign of direct action and civil disobedience by environmental activists in the immediate vicinity of a UK airport. Environmental groups were planning to organize a climate change awareness/action event, likely to attract thousands of activists, in the immediate vicinity of Heathrow Airport. The court ordered an injunction under the common law torts of trespass and nuisance forbidding the protesters from disrupting or impairing the operation of the airport.

Additional Information:
An Australian state court rejected a state agency’s approval of a residential development project. The agency failed to address aspects of ecologically sustainable development (ESD) in giving its approval to the concept plan. The court held that the agency had an obligation under the Environmental Planning and Assessment Act 1979 to take into account the principle of ESD and the impact of the proposal upon the environment, including whether the flooding impacts of the project would be compounded by climate change.

Click here for Decision

Additional Information:
Perry v. Hepburn Shire Council

Victorian Civil and Administrative Tribunal (2007), [2007] VCAT 1309

An Australian tribunal approved a proposal for a community owned wind farm. Among other grounds, local residents challenged that the wind energy generated from the project would not produce sufficient greenhouse gas benefits to justify the negative visual, environmental and amenity impacts of the turbines. The tribunal held that the proposal adequately considered the benefits to the broader community of renewable energy generation as well as the contribution of the project to reducing greenhouse gas emissions, and the probabilities weigh in favor of GHG abatement benefits being achieved.

Additional Information:

Click here for Decision
Phosphate Resources Ltd v. The Commonwealth

Federal Court of Australia (2004), [2004] FCA 211

An Australian federal court upheld a Determination by the Administrator of Christmas Island setting the fees chargeable for use of electricity on the Island. Phosphate Resources, a major user of electricity on the Island challenged one of the purposes of the Determination – compelling large users of electricity such as Phosphate to examine alternative options for power generation as part of an effort to minimize greenhouse gas emissions. The court held that if the Administrator expressly took into account the reduction of GHG emissions as a factor in setting the electricity fees on the Island, it is a legitimate public policy objective.

Additional Information:

Click here for Decision
Queensland Conservation Council Inc. v. Xstrata Coal

Queensland Court of Appeal (2007), [2007] QCA 338

An Australian state court reversed a lower tribunal’s decision, which granted an extension to Xstrata’s mining lease and denied Queensland Conservation Council (QCC) the ability to amend the conditions of the extension. The tribunal, concluding that the causal link between the mine’s greenhouse gas emissions and harms caused by global warming is an assumption, relied on evidence that was raised in neither Xstrata nor the QCC’s case. The court of appeals held that the tribunal, by merely informing the parties that it had become aware of documents which might be relevant to its decision, did not satisfy its obligation to afford the parties procedural fairness by giving them a real opportunity to present information or argument on a matter not already obvious but in fact regarded as important by the decision-maker.

Additional Information:
R. (On the Application of Littlewood) v. Bassetlaw DC

Queen’s Bench Division, Administrative Court (2008), [2008] EWHC 1812 (Admin)

A United Kingdom court upheld the grant of planning permission for a project which included a pre-case concrete manufacturing facility. A local resident challenged the district council’s decision, citing failure to consider the adverse impacts of the proposed facility on climate change, in particular, from carbon dioxide emissions. The court held that the omission of the effect of concrete production on climate change had not been raised in time, and in any case, did not render the Environmental Statement deficient.

Additional Information:
Re Australian Conservation Foundation v. Latrobe City Council

Victorian Civil and Administrative Tribunal (2004), 140 LGERA 100

An Australian tribunal overturned the decision of a government panel which refused to consider the greenhouse gas impacts of burning coal. The Hazelwood coal-fired power station is one of the largest in the state of Victoria and a significant contributor to the State’s GHG emissions. A government panel set up under the Victorian Planning and Environment Act 1987 and the Environmental Effects Act 1978 to consider the extension of the power station was instructed not to consider matters related to GHG emissions. The tribunal held that the assessment panel must consider the impacts of GHG emissions on the environment.

Click here for Decision

Additional Information:
Re Greenhouse Gas Emission Allowance: United Kingdom v. Commission of the European Communities

Court of the First Instance of the European Communities, First Instance (2005), Case T-178/05

European Court reversed a Commission of the European Communities decision barring the UK from amending its national allocation plan (NAP) under Article 9 of Directive 2003/87, which established a scheme for greenhouse gas (GHG) emission allowance trading within the European Community. A Member State is entitled to propose amendments to its NAP after it has been notified to the Commission, and until its adoption of its decision under Article 11(1), even if the amendments increase the total quantities of GHG emissions. The court found that the Commission made an error of law in rejecting the amendments proposed by the UK as inadmissible.

Additional Information:
The European Court of Justice upheld provisions of Directive 2003/87 implemented by French legislation, which applied the greenhouse gas trading scheme to installations in the steel sector. Arcelor, a worldwide steel enterprise, challenged the directive under the principle of equality. Arcelor argued that non-ferrous metals and plastics are both industries emitting greenhouse gases, yet they are not regulated by the Directive. The Court found the differences in treatment between the steel industry and the chemical and non-ferrous metal industries to be justified based on substantial differences among the industries, such as the number of installations and the levels of direct emissions.
Taralga Landscape Guardians Inc. v. Minister for Planning

Land and Environment Court of New South Wales (2007), 161 LGERA 1

An Australian state court upheld a proposal for a wind farm, noting that the overall public benefits outweighed any private burdens. A community organization challenged the proposal, citing negative impacts on their village and the surrounding countryside. The court held that the concept of ecologically sustainable development, specifically intergenerational equity, is central to any decision-making process concerning the development of new energy resources. In this case, it is reasonable to substitute an energy source that results in less greenhouse gas emissions for energy sources that result in more GHG emissions.

Additional Information:

Click here for Decision
The Kingsnorth Six Trial

Maidstone Crown Court (2008)

A United Kingdom trial court acquitted climate change activists of causing criminal damage at a coal-fired power station. Six Greenpeace activists attempted to shut down the Kingsnorth coal-fired power station in Kent by scaling the chimney and painting the Prime Minister’s name down the side. The defendants argued that by shutting down the coal plant for a day, they prevented greater damage to even more valuable property. The jury’s verdict was the first instance in which prevention of property damage resulting from the impacts of climate change was used as a lawful excuse in court.

Additional Information:

Decision Unavailable
Thornton v. Adelaide Hill Council

Environment, Resources and Development Court of South Australia (2006), 151 LGERA 1

An Australian state court upheld a council decision to grant Provisional Development Plan consent to a shed that would house a four megawatt capacity coal-fired boiler. Local landowners challenged the council’s decision, asserting that the boiler will have detrimental impacts on the local environment by, among other grounds, releasing greenhouse gases. The court found no evidence in this case of a likely increase in GHG emissions by the proposed development compared with the existing operation. However, it did recognize that increasing GHG emissions may be inconsistent with the principles of ecological sustainable development, including the principles of intergenerational equity and the precautionary principle.

Click here for Decision

Additional Information:
Wildlife Preservation Society of Queensland Proserpine/Whitsundry Branch Inc. v. Minister for the Environment & Heritage

Federal Court of Australia, (2006), [2006] FCA 736

An Australian federal court upheld a federal agency decision to not require an environmental impact assessment (EIA) for a coal mine proposal under the Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act). Environmental groups argued that the burning of coal harvested from the mines would contribute to global warming, which could have substantial adverse impacts on the ecosystems of world heritage areas like the Great Barrier Reef, triggering the EIA requirement under the EPBC Act. The Court held that the greenhouse gas emissions from the mining and burning of coal had been considered by the agency in its decision not to require an environmental impact statement. The judge was not persuaded that there is a casual link between coal mining activities and damage to ecosystems.

Additional Information:
Your Water Your Say Inc. v. Minister for the Environment, Heritage and the Arts

Federal Court of Australia (2008), [2008] FCA 670

An Australian federal court upheld a federal agency decision to exclude certain environmental assessments in approving a desalination plant proposal. A community organization asserted that the agency failed to consider linkages between additional GHG emissions and potential adverse impacts on matters protected by the Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act). The federal court held that the agency had considered (and dismissed) the impact of GHG emissions on matters protected by the BPBC Act, and had thus acted in accordance with the requirements of the Act.

Click here for Decision

Additional Information:
Petition To The Inter-American Commission on Human Rights Seeking Relief From Violations Resulting from Global Warming Caused By Acts and Omissions of the United States

Inter-American Commission on Human Rights (2005)

Sheila Watt-Cloutier, an Inuk woman and Chair of the Inuit Circumpolar Conference filed a petition to the Inter-American Commission on Human Rights seeking relief from human rights violations resulting from the impacts of climate change caused by acts and omissions of the United States. Petitioner requests the Commission to recommend that the United States adopt mandatory measures to limits its greenhouse gas (GHG) emissions, consider the impacts of GHG emissions on the Arctic in evaluating all major government actions, establish and implement a plan to protect Inuit culture and resources and provide assistance necessary for Inuit to adapt to the impacts of climate change that cannot be avoided.

Click here for Decision

Additional Information:
Barbone and Ross (on behalf of Stop Stansted Expansion) v. Secretary of State for Transport

Queen’s Bench Division, Admin Court (2009), [2009] EWHC 463

A United Kingdom court dismisses an application by the “Stop Stansted Explansion” group challenging the grant of planning permission relating to the increase in capacity of Stansted Airport under the Town and Country Planning Act 1990. Plaintiffs claimed that the government had, inter alia, failed to take into account the project’s effects on greenhouse gas emissions prior to granting the planning permission. However, the court held that the government had considered the impacts of the proposed development on climate change. Although the government is committed to tackling the problem of climate change and reducing greenhouse gas emission across the economy, this does not mean that every sector is expected to follow the same path.
Stuart Dimmock v. Secretary of State for Education and Skills

High Court of Justice, Queen’s Bench Division, Admin Court (1991), [2007] EWHC 2288

A United Kingdom Court upheld Secretary of State’s decision to distribute Al Gore’s documentary, “An Inconvenient Truth” to English state schools as a teaching aid. Claimant parent challenged the government’s decision to distribute the film on global warming as amounting to the promotion of partisan political views in violation of the Education Act of 1996. The court found the film substantially founded upon scientific evidence and determined that it could be shown, as long as teachers provided guidance explaining that, (1) some matters contained in the film were not supported or promoted by the government, and (2) the errors contained in the film.

Additional Information:

Click here for Decision
Aldous v. Greater Taree City Council and Another

Land and Environment Court of New South Wales (2009), [2009] NCWELC 17

An Australian court upheld approval of a development application by a city council for a dwelling on a beachfront property. Applicant land owner argued, inter alia, that the Council had failed to take into account the principles of ecologically sustainable development (ESD), specifically the principles of intergenerational equity and the precautionary principles by failing to assess climate change induced coastal erosion. The Council was in the process of conducting a coastal impact study, but made its decision prior to the completion of the study. The court concluded that the Council had a mandatory obligation under the Environmental Planning and Assessment Act 1979 to take into consideration the public interest, which included the principles of ESD, but in the present case, the defendant had considered the issue of coastal erosion.

Click here for Decision

Additional Information:
Gippsland Coastal Board v. South Gippsland Shire Council

Victorian Civil and Administrative Tribunal (2008), [2008] VCAT 1545

An Australian tribunal overturned a local council decision granting consent for residential developments in a coastal region. A regional coastal board, set up under the Victorian Coastal Management Act 1995, challenged the council decision, arguing that the proposed developments were inappropriate in light of projected sea level rises as a result of climate change. The tribunal applied the precautionary principle, finding that sea level rise and more extreme weather conditions resulting from climate change presented a reasonably foreseeable risk of inundation of the site, and determined that development consent should not be granted.

Click here for Decision

Additional Information:
The South Australian Supreme Court upheld local council decision to refuse development consent on the basis of unacceptable climate change risks to the proposed development. The court found the proposed development in violation of the goals and objectives of the council's Development Plan, and that hazardous sea level rise over the next 100 years due to climate change was a sufficient basis to support the refusal of the coastal development application.
Charles & Howard Pty Ltd v. Redland Shire Council

Queensland Planning and Environment Court (2008), [2007] QCA 200

An Australian Court held that a local council’s decision requiring the proposed dwelling to be relocated to an area less vulnerable to tidal inundation was justified. The court considered climate change induced flood risks and concluded that the council’s decision was compatible with local planning policy.

Additional Information:
Federal Republic of Germany v. Commission of the European Communities

Court of First Instance, Third Chamber, Extended Composition (2007), Case T-374/04

European Court concluded, inter alia, that while Member States have a degree of freedom in establishing a scheme for greenhouse gas emission allowance trading within the Community, the Commission is authorized to verify that the adopted measures are consistent with Directive 2003/87. Furthermore, individual allocation of allowances for greenhouse gas emissions and the national allocation plan (NAP) are open to amendment under Article 11(1) of Directive 2003/87. The Court also noted that ex-post adjustments of allowances allocated by a NAP do not harm the principal objective of Directive 2003/87.
Republic of Poland v. Commission of the European Communities

Court of First Instance, Second Chamber (2009), Case T-183/07

In 2006, the Republic of Poland notified the Commission of its NAP for the period from 2008 to 2012. In 2007, the Commission held that its NAP was incompatible with the criteria set forth in Directive 2003/87 and decided that the total annual quantities of emission allowances should be reduced to 26.7% less than that proposed. Poland appealed the Commission’s decision. As a preliminary issue, the Court held that each member state is to decide, on the basis of its NAP, on the total quantity of allowances it will allocate for a period in question, and the Commission’s power to review these NAPs is very restricted. In the present case, the Commission’s rejection of Poland’s plan based on doubts as to the reliability of the data used exceeded the commission’s authority and violated the principle of equal treatment.

Click here for Decision

Additional Information:
Republic of Estonia v. Commission of the European Communities

Court of First Instance, Seventh Chamber (2009), Case T-263/07

In 2006, the Republic of Estonia notified the Commission of its NAP for the period from 2008 to 2012. In 2007, the Commission held that its NAP was incompatible with the criteria set forth in Directive 2003/87 and decided that the total annual quantities of emission allowances should be reduced to 47.8% less than that proposed. Estonia appealed the Commission’s decision. As a preliminary issue, the Court held that each member state is to decide, on the basis of its NAP, on the total quantity of allowances it will allocate for a period in question, and the Commission’s power to review these NAPs is very restricted. In the present case, Estonia claimed that the Commission erred in finding that its NAP had failed to include a “reserve” of allowances. The Court disagreed and held that the Commission did not properly examine the NAP and infringed on the principle of sound administration.

Click here for Decision

Additional Information:
EnBW Energie Baden-Württemberg AG  v. Commission of the European Communities

Court of First Instance, Third Chamber (2007), Case T-387/04

European Court decision on the implementation of Directive 2003/87/EC establishing the greenhouse gas allowance trading scheme. EnBW (major German energy producer) requested the annulment of the Commission decision of 7 July 2004 on the German National Allocation Plan (NAP). EnBW Energie Baden-Württemberg AG disagreed with the allocation methods for power stations decommissioning nuclear energy installations and considered the generous transfer rule illegal state aid. It claimed that the Commission had failed to initiate state aid procedures under EC law, thereby breaching Article 88 (2) of the Treaty. In its order of 30 April 2007, the Court decided that the request was inadmissible for lack of interest in bringing the proceedings.

Additional Information:

Click here for Decision
U.S. Steel Košice v. Commission of the European Communities (two cases)

Court of First Instance (2007), Case T-489/04
Court of First Instance (2007), Case T-27/07

In Case T-489/04 (“U.S. Steel Kosice I”), applicant U.S. Steel Kosice requested the annulment of a 2006 Commission decision on the Slovak NAP for Phase I of the EU ETS on the grounds that the Slovak Republic had been pressured by the Commission during allegedly non-transparent, bilateral negotiations into reducing the total number of allowances under the NAP. The court dismissed the application as inadmissible, ruling that the reduction of the total quantity of allowance and the Commission’s decision on the NAP did not individually affect the applicant’s interests.

In the second case, Case T-27/07 (“U.S. Steel Kosice II”), applicant sought annulment of the Commission’s decision regarding the Slovak NAP for Phase II. The court held that the action was inadmissible for the same reason above. Applicant unsuccessfully appealed the decision to the European Court of Justice in Case C-6/08.
Greenpeace New Zealand v. Northland Regional Council

High Court of New Zealand (2006), September 25, 2006, [2007] NZRMA 87

New Zealand Court ruled in favor of Greenpeace holding that climate change was a relevant consideration in the government’s consent of greenhouse gas discharge from a proposed coal-fired power station. The Northland Regional Council had granted consent to Mighty River Power Ltd to discharge contaminants from a proposed coal-fired power station at Marsden Point. The court held, under the Resource Management Act 1991, that a consent authority can consider the effects of such discharge on climate change in applications relating to both renewable and non-renewable energy.

Click here for Decision

Additional Information:
Meridian Energy Ltd et al v. Wellington City Council

Environment Court of New Zealand, W031/07, [2007] NZEnvC 128 (14 May 2007)

New Zealand Environment Court upheld approval for a wind farm. The court found that the generation of electricity on a wind farm, which emits no greenhouse gases, is relevant to whether the wind farm should be approved.

Additional Information:
Rivers SOS Inc. v. Minister for Planning

Land and Environment Court of New South Wales (2009), [2009] NSWELC 213

In June 2009, New South Wales Planning Minister approved a $50 million expansion of the Metropolitan coal mine, allowing longwall mining to take place underneath the Woronora Reservoir. The Minister approved a substantially revised version of the project at a late stage in the assessment process, without providing any further opportunities for public participation and agency involvement. Rivers SOS, a community group, challenged the legality of the mining approval process. On December 16, 2009, the Land and Environment Court upheld the decision of the Minister.

Click here for Decision

Additional Information:
Commission of the European Communities v. Finland

European Court of Justice (2006), C-107/05

Finland failed to apply in full the EU ETS to the province of Aland. The Commission brought this action under the Article 226 EC procedure, contending that Finland had failed to properly implement the Directive. The Court agreed with the Commission, holding that Finland, by not implementing Directive 2003/87/EC in due time, failed to fulfill its obligations.

Additional Information:

Click here for Decision
R. (on the application of People & Planet) v. HM Treasury

High Court of Justice, Queen’s Bench Division (2009), [2009] EWHC 3020

Campaigners from the World Development Movement, PLATFORM, and People & Planet brought suit against the United Kingdom Treasury for its lack of adequate environmental and human rights considerations in investing with the Royal Bank of Scotland (RBS). RBS has allegedly used public monies to finance several controversial companies and projects that undermine the UK’s commitment to halt climate change. The High Court denied the request for permission to hold a judicial review over the Treasury’s actions.

Click here for Decision

Additional Information:
Commission of the European Communities v. Italian Republic

European Court of Justice (2006), C-122/05

Action brought against the Italian Republic by the Commission for its failure to adopt all laws, regulations, and administrative provisions necessary to comply with Directive 2003/87/EC. The court ruled that the Italian Republic had failed to fulfill its obligations under Article 31(1) of the directive.

Additional Information:

Click here for Decision
Drax Power and others v. Commission of the European Communities

Court of First Instance (2007), Case T-130/06

Applicant contended that the Commission wrongly rejected the United Kingdom national allocation plan (NAP) for a second time following its decision in Case T-178/05, United Kingdom v. Commission, on the grounds that the proposed amendments were notified too late. The court dismissed the application as inadmissible.

Additional Information:

Click here for Decision
Fels-Werke GmbH v. Commission of the European Communities

Court of First Instance (2007), *Case T-28/07*

Applicants sought to annul Commission decision rejecting part of the German Phase II national allocation plan (NAP). The court dismissed the action as inadmissible because the Applicants were not individually affected. The decision as appeal to the European Court of Justice in Case C-503/07, *Saint-Gobain Glass Deutschland v. Commission of the European Communities* (European Court of Justice, 2008). The Court affirmed the lower court’s decision and dismissed the appeal, ruling that the Appellant could not sufficiently demonstrate that it was individually affected by the contested decision.

Click here for *Order*

Additional Information:
Buzzi Unicem SpA v. Commission of the European Communities

Court of First Instance (2008), Case T-241/07

Applicant Italian cement producer sought to annul a Commission decision rejecting in part the Italian Phase II national allocation plan (NAP). The court dismissed the action as inadmissible because the Applicant was unable to demonstrate that it was directly and individually affected.

Click here for Decision

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Court of First Instance (2008)

Applicants in the above actions challenged the Commission of the European Communities’ decision rejecting the Polish Phase II national allocation plan (NAP) for the allocation of GHG emission allowances. The Court dismissed all actions as inadmissible because the Commission’s decision did not directly and individually affect the Applicants.
### Petitions to the United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage Committee:

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*More information on the World Heritage Committee petitions and decisions can be accessed on the [www.climatelaw.org](http://www.climatelaw.org) site.*
Re French Carbon Tax: Decision No. 2009-599 DC of December 29 2009

French Constitutional Council (2009)

French Constitutional Council annulled a tax on carbon emissions. The tax was set at 17 Euros per ton of carbon dioxide. The Council ruled that the proposed tax contained too many exemptions and would not have applied to 93% of industrial emissions.

Press Release of the Constitutional Council

Additional Information:

• Wall Street Journal article
Citizens of Riverdale Hospital v. Bridgepoint Health Services

Ontario Superior Court of Justice, O.J. No. 2527 (2007)

Ontario Superior Court of Justice, Canada. A citizen’s group opposed the demolition of a hospital in the City of Toronto. Among other reasons, the group argued that the Ontario Municipal Board had failed to adequately consider the issue of greenhouse gas emissions. The Court concluded that although CO2 emissions is an important environmental concern, the City and the Board had adequately considered the issue and correctly found the proposal to meet the requirements of section 24(1) of the Planning Act, R.S.O. 1990, c. P-13, as amended.

Additional Information:

Click here for Decision
Micronesia Transboundary EIA Request

On December 3, 2009, the Federated States of Micronesia requested the Czech Republic, in accordance with § 11(1)(b) of the Act on Environmental Impact Assessment, to initiate a Transboundary Environmental Impact Assessment (EIA) proceeding for its plans to modernize and extend operations of the Prunerov II coal-fired power plant. Micronesia asserted that it has reasonable grounds to believe that its territory will be affected by the continued operation of the power plant.

The Ministry for Environment had since issued a permit for the power plant.

Additional Information:

- Greenpeace Press Release
- Environmental Law Service

Transboundary EIA Request
Environment-People-Law v. Cabinet of Ministers of Ukraine and National Agency of Environmental Investments

Lviv Circuit Admin. Court (2009)

In October 2009, the Ukrainian public interest organization Environment-People-Law (EPL) filed suit against the government, seeking to compel the dissemination of information on international greenhouse gas emissions trading. EPL specifically seeks information regarding an agreement between Ukraine and Japan, where the Japanese government agreed to buy 30 million tons of carbon offsets from the Ukrainian government. EPL contends that both the Aarhus Convention and the Constitution of Ukraine compels public access to the information.

Decision Unavailable

Additional Information:

- EPL Case Description
Environment-People-Law v. Ministry of Environmental Protection

Commercial Court of Lviv (2008)

On July 31, 2008, a Ukrainian court ordered the Ministry of Environmental Protection to take certain actions aimed at national greenhouse gas reductions. The Ukrainian public interest organization Environment-People-Law (EPL) sought to compel the Ministry to develop a climate change policy for Ukraine; work towards fulfilling its climate change obligations under the United Nations Framework Convention on Climate Change (UNPCCC), the Kyoto Protocol and the National Plan; and raise public awareness on climate change issues.

Decision Unavailable

Additional Information:

- EPL Case Description
Arcelor SA v. Parliament and Council

General Court of the European Union (2010), Case T-16/04

General Court of the European Union dismissed an action brought by Arcelor, a steel producer, challenging the validity of the Emissions Trading Directive. Arcelor claimed that application of certain articles of the directive violated several principles of Community law, including the right of property, the freedom to pursue an economic activity, the principle of proportionality, the principle of equal treatment, freedom of establishment and the principle of legal certainty. The General Court dismissed the action for annulment as inadmissible, noting that Arcelor is neither individually nor directly concerned by the directive.

Click here for Decision

Additional Information:
Pembina Institute for Appropriate Development, et al v. Attorney General of Canada and Imperial Oil

Federal Court of Canada (2008), 2008 FC 302

Federal Court of Canada found legal errors in a government joint review panel’s environmental assessment of the Kearl Tar Sands Project. Ecojustice and several non-profit organizations challenged the panel’s approval of the project, alleging that it had failed to seriously consider the climate change impacts of the project. The court agreed with the petitioner, holding that the panel failed to adequately support their conclusion that the project would cause only insignificant environmental harm.

Additional Information:

Click here for Decision
R on the application of the London Borough of Hillingdon and others v. Secretary of State for Transport

High Court, United Kingdom (2010), [2010] EWHC 626

On March 26, 2010, a British high court ordered government officials to consider the implications of climate change prior to making any final decision on a third runway at London’s Heathrow Airport. The court ruled that the government had failed to adequately review all environmental and economic issues, and that the aviation policy should probably be revisited in light of the 2008 Climate Change Act.

Additional Information:

- Heathrow third runway opponents win court challenge (BBC News)
Peter Gray & Naomi Hodgson v. Macquarie Generation

Land and Environment Court of New South Wales, Australia (2010), [2010] NSWLEC 34

Environmental activists brought suit against a state-owned power company, seeking a declaratory judgment that one of their power stations has been emitting carbon dioxide into the atmosphere in a manner that has harmed or is likely to harm the environment in contravention of § 115(1) of the Protection of the Environment Operations Act 1997. Defendant Macquarie Generation motion for summary dismissal was denied on March 22, 2010, although Justice Pain did dismiss the applicants case in part. The court found that even if Defendant has an implied authority to emit some amount of carbon dioxide in generating electricity under its license, that authority is limited to an amount which has reasonable regard and care for people and the environment.

Click here for Decision

Additional Information:

• A licence to change the climate? Court considers whether licence permits emission of carbon dioxide
Weaver v. Corcoran and Others

British Columbia Supreme Court, Canada

Professor Andrew Weaver, a renown Canadian climate scientist, has filed suit against the National Post for allegedly publishing a series of unjustified libels based on erroneous information. Plaintiff Weaver seeks an injunction against the National Post, which would require the newspaper to remove the allegedly false statements from its websites as well as from any sites at which such statements have been reposted.

Claim unavailable

Additional Information:
Afton Chemical Limited v. Secretary of State for Transport

European Court of Justice, Case C-343/09 (2010)

Afton Chemical, a British MMT producer, challenged the EU limits and labeling requirements for the use of the metallic fuel additive MMT. The European Court of Justice ruled that the limit on MMT, adopted in the revised fuel quality Directive 98/70/EC, does not violate the precautionary principle and the principles on equal treatment and proportionality. The court concluded that the EC places significant weight on the protection of human health and the environment. Reducing the health and environmental risks associated with MMT use outweighs the economic interests of Afton Chemical.
Rockware Glass Ltd. v. Chester City Council

Administrative Court, High Court of Justice [2005] EWHC 2250

A Planning Pollution Control License was challenged by a commercial rival. The High Court of Justice upheld a decision quashing an integrated pollution prevention and control (IPPC) permit granted to operate an industrial plant for the manufacture of glassware since the purpose of the Pollution Prevention and Control (England and Wales) Regulations 2000 was to control pollution by stringent measures not merely by reference to the standards contained in the Environment Quality Standards, which provided only minimum requirements.

Click here for Opinion

Additional Information:
Yelland Wind Ltd. v. West Devon BC

[2007] P.A.D. 13, United Kingdom

Yelland Wind Farm Ltd. appealed a decision by the West Devon Borough Council refusing planning permission for a proposal to build three 266 feet high wind turbines on the edge of Dartmoor National Park. The Planning Inspector dismissed the appeal, finding the proposal’s adverse landscape and visual impacts to be decisive. However, the court did note that the proposal supported the objectives of national policies for the promotion and deployment of renewable energy technologies.
Bradford v. West Devon BC

[2007] P.A.D. 45, United Kingdom

Farmers appealed the refusal of planning permission for two wind turbines. The Planning Inspector affirmed the local council’s decision, citing the proposal’s adverse effects on surrounding landscapes and the residential amenities of nearby occupiers. The Inspector acknowledged the importance of the need to combat global warming, but concluded that this policy goal must be balanced against visual and landscape concerns. Even though the project would supply electricity to more than 1,200 homes and would generate significant revenues over its expected 25-year life span, these benefits, according to the Inspector, are outweighed by the unacceptable harm to the character and appearance of the distinctive local landscape.

Decision Unavailable

Additional Information:
Laughton Wind Farm Ltd. v. West Lindsey DC

[2006] P.A.D. 37, United Kingdom

Laughton Wind Farm Ltd. appealed a decision by the West Lindsey Borough Council refusing planning permission for a proposal to build ten wind turbines. The Planning Inspector concluded that the proposed wind farm would have an unacceptably substantial impact upon the local landscape and visual amenity of the local area, especially since the turbines would be taller than any other structure in the area and that the rotation of the blades would make them particularly conspicuous in the landscape.
Allerdale BC v. Cumbria Wind Farms Ltd.

[2000] 15 P.A.D. 833, United Kingdom

Cumbria Wind Farms Ltd. appealed local council decision refusing planning permission for the erection of six wind turbines near a national park. The Planning Inspector affirmed the local council’s decision, concluding that the adverse visual effects in this particular case outweigh the need for renewable energy. Although the proposal tangibly contributes to the government’s targets for renewable energy production and for the reduction in the emission of greenhouse gases, its harm to the local landscape is unacceptable.

Click here for Opinion

Additional Information:
A building and construction company appealed a local council failure to determine within a prescribed period an application for the erection of eight wind turbines. On appeal, the Planning Inspector acknowledged that the production capacity of the turbines would provide a material contribution to the supply of renewable energy in accordance with government policy, but concluded that the proposal would unacceptably ham the surrounding landscapes and the living conditions of nearby residents.
City of Bradford Metropolitan Council v. Gillson and Sons

[1995] 10 P.A.D. 255, United Kingdom

A building and construction company appealed a local council failure to determine within the prescribed period an application for permission to erect three wind turbines at a quarry in Haworth, West Yorkshire. On appeal, the Planning Inspector concluded that the contribution that 2,500 kW turbines would make to the national energy supply in achievement of national policies on renewable energy, though tangible, did not outweigh the serious harm the proposal would cause to the character and appearance of the surrounding landscape, particularly the Brow Moors, having regard to local planning policies. The Inspector took particular note of the Moor’s importance in the national cultural history, due to their prominence in the writings of the Brontë family.

Click here for Opinion

Additional Information:

See also City of Bradford Metropolitan Council v. Woodhead and Sons Ltd., [1995] 10 P.A.D. 243
City of Bradford Metropolitan Council v. Feather

[1995] 10 P.A.D. 267, United Kingdom

A building and construction company appealed a local council failure to determine within the prescribed period an application for the erection of three wind turbine generators, an electrical sub-station, and cables at a quarry in Haworth, West Yorkshire. On appeal, the Planning Inspector acknowledged the contribution that wind energy generation would make in this case to the national energy supply in achievement of national policies on renewable energy, but concluded that it could not outweigh the harm that the proposal would cause to the surrounding landscape. The noise created by the turbines, though not a compelling objection on its own, added weighed against approval of the application.

Click here for Opinion

Additional Information:

Judgment No. 6903/2008 of September 30, 2008

Supreme Court of Spain, Administrative Litigation Division (Section 5)   Appeal No. 244/2005

An energy company, Unión Fenosa Generación, S.A., brought suit against a decision of the Council of Ministers of Spain of January 21, 2005, whereby it approved the assignment of emissions allowances to two of the company’s power plants for the 2005-2007 term under the provisions of Royal Decree 5/2004 of August 27th, which regulated the market for GHG emissions trading. The Court granted plaintiff’s request for an increase in the emission allowances for its combined cycle power plant in Huelva, which had been incorrectly considered a “new entrant” to the emissions market under the regulation’s timetable. Plaintiff’s request for an increase in its emission allowances as to its coal-fired power plant in La Coruña, one of the five worst emitters in the country, was denied. The Court found that the government was justified in applying the maximum penalty of 55% over the total 2000-2002 historical emissions for that category of emitter, despite the fact that plaintiff was thus allowed a lower emission factor than other emitters of the same generation of technologies.

Click here for Opinion
A brick manufacturer, Macerba de Bailén, S.L., brought suit against a decision of the Council of Ministers of Spain of January 21, 2005 approving the assignment of emission allowances to its factory in Bailén at a total of 43,746 tons of CO2 over the course of three years (2005-2007), or 14,582 tons per year. The Court declared the decision of the Council of Ministers null and void as a matter of both Spanish administrative and constitutional law, as well as the laws of the European Union. The administrative record did not adduce any reasons for the Council's decision to assign to the facility an amount substantially less than requested (27,825 tons of CO2 annually, or a total of 83,475 tons for the 2005-2007 term) though the request was substantiated by technical evidence indicating that the factory was in the process of expanding its production capacity. The Ministry of the Environment was ordered to conduct a new assignment of credits.

Click here for Opinion
Judgment No. 5347/2008 of October 6, 2008

Supreme Court of Spain, Administrative Litigation Division (Section 5) Appeal No. 100/2005

Foraneto, S.L. brought suit against the Council of Ministers of Spain challenging their decision to approve the individual assignment of emissions credits to its energy plant in Tarragona at a total of 140,250 tons of CO2 for 2005-2007 period, or 46.750 tons per year, under the provisions of Royal Decree 5/2004 of August 27th. Foraneto sought partial annulment of the Council's decision in order to increase its credit allowance by a total of 35,318 tons, or 11,772 additional tons per year (the amount originally requested); in the alternative, they sought compensation at the average market rate. The court found in Foraneto's favor, holding that the assignment of credits was made by applying formalistic factors that did not take into account the real volume of production at the Tarragona facility. Based on an expert's testimony, the court changed the assignment to a total of 174,508 tons for the 2005-2007 period, or 58.136 tons per year.

Click here for Opinion
Judgment No. 7449/2008 of November 18, 2008

Supreme Court of Spain, Administrative Litigation Division (Section 5) Appeal No. 332/2006

Minera Catalana Aragonesa, S.A. brought suit against the General Government Administration of Spain (Ministry of the Environment) challenging the decision of the Council of Ministers of Spain of July 14, 2006, approving the individual assignment of emissions credits to its ceramics facility in the region of Onda. Minera Catalana had requested the exclusion of the types of processes employed at its facility (the drying of barbotine, a mixture of clay and water, by atomization) in the definition of "combustion facilities" under Law 1/2005 of March 9th, as modified by Royal Decree 5/2005 of March 11th, which regulates the market for GHG emissions trading in Spain. The court found in Minera Catalana's favor, adopting its argument that because its combustion processes were not used for energy production they could not be included in the scope of Law 1/2005, and declared the decision of the Council of Ministers in this respect null and void.

Click here for Opinion
Judgment No. 6895/2008 of November 19, 2008

Supreme Court of Spain, Administrative Litigation Division (Section 5)   Appeal No. 318/2005

A brick manufacturer, Ladri Bailén, S.L., brought suit against a decision of the Council of Ministers of Spain of January 21, 2005 approving the assignment of emission allowances to its factory in Bailén at a total of 57,033 tons of CO2 for the 2005-2007 period, or 19,011 tons per year. The Court declared the decision of the Council of Ministers null and void as a matter of both Spanish administrative and constitutional law, as well as the laws of the European Union. The administrative record did not adduce sufficient reasons for the decision to assign to the facility an amount substantially less than requested (27,346 tons of CO2 annually, or a total of 83,038 tons for the 2005-2007 period), though the request had been substantiated by adequate evidence indicating that the factory had increased its production capacity. The Ministry of the Environment was ordered to conduct a new assignment of credits.

Click here for Opinion
Cales de Llierca, S.A., brought suit against the Council of Ministers of Spain challenging their decision of January 21, 2005 approving the individual assignment of emissions credits to its lime processing facility for the 2005-2007 period. Cales de Llierca argued the assignment of credits was done in violation of provisions in Royal Decree 1866/2004 which required consideration of increased production capacity prior to a certain date in order to determine acceptable emissions levels and the corresponding assignment of credits. The court found in favor of Cales de Llierca and ordered the Council to conduct a new assignment of credits, holding that the administrative record did not sustain the Council's conclusion regarding the facility's production capacity and that it had misapplied the methodologies required by applicable laws in reaching its conclusion.

Supreme Court of Spain, Administrative Litigation Division (Section 5) Appeal No. 315/2005

Cerámica Hermanos Fernández S.L. brought suit against the General Government Administration of Spain challenging the decision of the Council of Ministers of Spain of January 21, 2005 approving an individual assignment of emissions credits to its facility. The court denied Cerámica’s petition. It rejected petitioner’s argument that the Council’s decision had violated its right of free enterprise because individual assignments were not being based on objective criteria, and that its particular assignment should have been based on the facility’s production capacity, as opposed to its actual production.

Click here for Opinion
Judgment No. 4745/2009 of July 6, 2009

Supreme Court of Spain, Administrative Litigation Division (Section 5)  Appeal No.98/2005

A mineral extraction company, Segura, S.L., brought suit against a decision of the Council of Ministers of Spain of January 21, 2005, which approved the assignment of emission credits to the company’s limestone processing facility in Seville for the 2005-2007 term under the provisions of Royal Decree 5/2004 of August 27th, which regulated the market for GHG emissions trading. The Court found that the decision of the Council was invalid because it did not adduce adequate foundation as to the criteria that were applied to quantify the emission credits assigned to Segura, S.L., and ordered the Council to conduct the assignment of credits anew. Adequate foundation deemed important to avoid arbitrary application of rules, to promote transparency in the market for emissions trading, and avoid impinging on principles of sound competition.

Click here for Opinion
Judgment No. 1205/2010 of March 4, 2010

Supreme Court of Spain, Administrative Litigation Division (Section 5)  Appeal No.21/2007

An energy retailing company brought suit against the General Government Administration of Spain, challenging Royal Decree 1370/2006 of November 24th (Official Bulletin of the State No. 282 of November 25, 2006), which implemented amendments to Spain’s National Allocation Plan for greenhouse gas allowances for 2008-2012. Court found that rules setting standards for SO2 emissions, and which took into account investments to reduce SO2 emissions by coal-fired power plants in assigning emission allowances under the Plan, were null and void on their face because they were not specifically authorized by Spain’s implementing statute for the EU’s Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003, Law 1/2005 of March 9th. Rules relating to the provisional assignment of credits for new installations also found to be contrary to the implementing statute because they effectively altered the definition of “new entrants” in the statute. However, the Court rejected plaintiff’s argument that the Plan’s methodology for the assignment of credits to coal-fired power plants was invalid because it placed undue burdens on certain facilities, as well as its argument that the allowance reserves for new entrants were inadequately low.

Click here for Opinion
Decision No. 2010-622 DC of December 28 2010

French Constitutional Council (2010)

Article 64 of the finance law of 2011 provides that companies will have to purchase their greenhouse gas emissions quotas for 2011 whereas quotas were distributed free of charge in 2010. Some of the companies have still not received their quotas, even though they carried out activities in 2010, and as a result challenged the validity of the law as violating the principle of equality between companies. However the Constitutional Council upholds the validity of the article as the quota purchase will only apply for 2011 and 2012.

Click here for Opinion

Additional Information:

Click here for online source.
Decision No. 287110 of February 8, 2007, Société Arcelor Atlantique et Lorraine et autres

French Council of State (2007)

Companies from the steel industry claimed that decree n°2004-832, which transposes the EU directive of October 13, 2003 establishing a system of exchange of greenhouse gas emission quotas in the European Union, was illegal. The Companies claimed that the directive violated the principle of equality since it provided for a difference of treatment between certain industries. Indeed it included the companies from the steel industry but excluded companies from the plastic and aluminum industries. The French Conseil d’Etat referred the question to the European Court of Justice for a preliminary ruling. The European Court of Justice held that the directive did not violate the principle of equality as the difference of treatment between the industries was justified by objective criteria, such as the very low carbon dioxide emissions from the non-steel industries.

Click here for Opinion

Additional Information:

Click here for online source

Supreme Court of Spain, Administrative Litigation Division (Section 5) Appeal No. 322/2005

Cerámica General Castaños, S.A., brought suit against the decision of the Council of Ministers of Spain of January 21, 2005 approving the assignment of emission credits to its facility in Bailen for the 2005-2007 term at 6,666 annual tons of CO2. The Court found in favor of Cerámica, inasmuch as the Administration had not taken into account the proven increase in production capacity that was expected from the facility's new wing. According to the Court, Royal Decree 1866/2004 of September 6, 2004 required consideration of increased production capacity prior to a certain date in order to determine acceptable emissions levels and the corresponding assignment of credits. However, the Court found there was insufficient proof in the record to sustain Cerámica's argument for an increase to 7,725 annual tons of CO2. Accordingly, the Court annulled the individual assignment of emissions credits and ordered that a new calculation take place in harmony with its findings.

Click here for Opinion
Judgment No. 3421/2009 of May 29, 2009

Supreme Court of Spain, Administrative Litigation Division (Section 5)  Appeal No. 303/2005

Cerámica Dolores García Bazataqui S.L. brought suit challenging the decision of the Council of Ministers of Spain of January 21, 2005 that declared the individual assignment of emissions credits for the 2005-2007 term. Cerámica was assigned 18,051 annual credits, instead of the 29,023.76 it had requested. It argued that the assignment of credits was done in violation of provisions in Royal Decree 1866/2004 of September 6, 2004, which required consideration of increased production capacity prior to a certain date in order to determine acceptable emissions levels and the corresponding assignment of credits. The Court rejected this argument and dismissed the petition, as the record reflected that the Administration had adequately taken these factors into account.

Click here for Opinion
Judgment No. 6846/2009 of July 15, 2009

Supreme Court of Spain, Administrative Litigation Division (Section 5) Appeal No. 119/2004

Electra de Viesgo Distribución S.L. and Viesgo Generación S.L. (also known as E.On Distribución S.L. and E. On Generación S.L.) brought suit challenging the individual assignment of emissions credits contained in Royal Decree 1866/2004 of September 6, 2004, which approved the National Plan for Assignment of emissions credits 2005-2007. The decree, argued the plaintiffs, did not contain a savings clause applicable to the electricity sector (as it did for the industrial sector) to allow the adjustment of the credits assigned to facilities for which the reference period for the overall calculation of credits (the years 2002-2000) was not representative of historic emissions. Electra argued that not allowing otherwise eligible facilities to apply for adjustment of credits in accordance with their truly representative emissions periods resulted in a violation of the principle of equality. The Court found in favor of plaintiffs, inasmuch as the Administration did not provide a justification for not providing a savings clause to the electricity sector, and declared null and void section 4.A.a. of the National Plan.

Click here for Opinion
Judgment No. 5087/2009 of July 17, 2009

Supreme Court of Spain, Administrative Litigation Division (Section 5)   Appeal No. 103/2005

Arcelor España, S.A. (previously known as Arcelaria Corporación Siderúrgica, S.A.) challenged the decision of the Council of Ministers of Spain of January 21, 2005, declaring the individual assignment of emissions credits for the 2005-2007 term. Arcelor argued the decision was void because (1) the European norm on which it was based violated the principles of equality, freedom of enterprise, the right to property, and rule of law; and (2) Spanish Law 1/2005 of March 9th, which transposed the EU's Directive 2003/87/EC, was also invalid as to its applicability to the iron and steel industry and not to others that compete with the same (e.g. the chemical sector and the sector for non-ferrous metals). The Court rejected Arcelor's arguments and dismissed its request for remedy.

Click here for Opinion

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Director of Public Prosecutions v. Fraser and O’Donnell

Supreme Court of New South Wales, Common Law Division (2008), [2008] NSWSC 244

On 24 September 2007, two environmental activists associated with Greenpeace trespassed into a coal loader owned by Port Waratah Coal Services and halted the operation of the conveyor belt for almost two hours at a cost of approximately $27,000. Police arrested and charged the activists for “maliciously damaging property” under section 195 (1) of the Crimes Act 1900. The prosecutor and counsel for the defendants questioned the meaning of “damages” as it appeared in section 195 and whether the defendants’ actions applied. The magistrate ruled that there were two sorts of damages (physical and monetary) and that the defendants could only be charged for monetary damage, which would constitute a civil crime, not a criminal one. He proceeded to dismiss the charge.

Click here for Opinion
Australian Competition and Consumer Commission v. GM Holden Ltd

Federal Court of Australia (2008), [2008] FCA 1428

The Australian Competition and Consumer Commission (ACCC) filed a suit against GM Holden Ltd for wrongly advertising that Saab vehicles provided “carbon neutral motoring.” GM Holden had claimed that Saab would plant 17 native trees for every Saab vehicle purchased to offset the carbon emissions. ACCC filed its claim on the basis that GM Holden had not shown any change in the way it manufactured Saab vehicles subsequent to its carbon neutral campaign and that GM Holden’s claim that 17 native trees would offset the carbon emissions was not proven and was misleading. The Federal Court declared that GM Holden had breached sections 52 and 53(c) of the Trade Practices Act 1974. GM Holden agreed to advise its marketing staff to avoid “misleading and deceptive” marketing tactics and to plant 12,500 native trees to offset all the carbon emissions that would occur by Saab vehicles sold during the marketing campaign.

Click here for Opinion

Case Index: Sorted by Case Title
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Global Green Plan Ltd was paid by customers to purchase renewable energy certificates (RECs). In December 2009, Global Green Plan acknowledged that it had not been using the money provided to it to purchase RECs, and pledged that it would make up the 4,137 missing RECs by March 2010. When it failed to do so, the Australian Competition and Consumer Commission instituted proceedings in the Federal Court. On September 29, 2010, the Federal Court declared that Global Green Plan had failed to meet its pledge and that it had breached the Trade Practices Act 1974.
Australian Competition and Consumer Commission v. De Longhi Australia Pty Ltd

The Australian Competition and Consumer Commission challenged De Longhi Australia Pty Ltd for falsely claiming that the refrigerant gas R290 used in its portable air conditioners was “environmentally friendly.” De Longhi provided a court-enforceable undertaking that it would modify its advertising to avoid unqualified claims.

Click here for Press Release
Australian Competition and Consumer Commission v. Goodyear Tyres

The Australian Competition and Consumer Commission (ACCC) challenged Goodyear Tyres for falsely labeling its LS200 tyres as “environmentally-friendly” because its production process emitted less carbon dioxide and its new BioTRED technology increased the life of the tyre and improved fuel economy. ACCC charged that Goodyear Tyres was misleading consumers about the environmental benefits of its tyres, breaching sections 52 and 53(c) of the Trade Practices Act 1974. Goodyear Tyres gave a court-enforceable undertaking that it would halt its false advertising and partially compensate all customers who had relied on it during 2007 and 2008.

Click here for Press Release
Australian Competition and Consumer commission v. V8 Supercars Australia Pty Ltd

The Australian Competition and Consumer Commission (ACCC) challenged V8 Supercars Australia Pty Ltd for being misleading in its Racing Green Program’s claim that it was offsetting carbon emissions from its V8 Championship Emissions by planting 10,000 native trees. The ACCC contended that the claim was ambiguous because it failed to state over what time span the carbon emissions would be supposedly nullified. V8 Supercars acknowledged the ACCC’s concerns and agreed to a court enforceable undertaking that it would ensure compliance with the Trade Practices Act 1974 in any of its future “green marketing” schemes.
The Australian Competition and Consumer Commission challenged Prime Carbon Pty Ltd, a company that sells carbon credits, for falsely claiming that it was certified by the National Stock Exchange of Australia and that the National Environment Registry, a company through which Prime Carbon supplied some of its credits, was regulated by the Australian Government. The Federal Court ruled that Prime Carbon had misrepresented its services and affiliations, violating section 53 of the Trade Practices Act 1974. Prime Carbon was ordered to publicize the court’s orders to its customers and Kenneth Bellamy, the sole director of the company, was ordered to undergo compliance training.

Click here for Press Release
Anvil Hill Project Watch Association v. Minister for the Environment and Water Resources

Federal Court of Australia, New South Wales District (2008), [2008] FCAFC 3

Under section 75(1) of the Environmental Protection and Biodiversity Conservation Act, the Commonwealth Minister is to assess if a proposed action is a “controlled action.” The Anvil Hill Project Watch Association challenged the decision by the Minister that the proposed construction of an open coal mine was not a “controlled action.” The court ruled that section 75(1) did not require an objective factual determination by the Minister of whether an action is considered a “controlled action” or not.
Myers v. South Gippsland Shire Council (No 1)

Victorian Civil and Administrative Tribunal (2009), [2009] VCAT 1022

An applicant filed a proposal to split coastal land into two residential lots. Deborah Myers launched this case, claiming that the vulnerability to impacts of climate change had not been properly considered and that the subdivision would be contrary to the character of Waratah Bay, where the coastal land was located. The Tribunal ruled that there was insufficient information to determine the impacts of climate change on the proposed lots and ordered the applicant to submit a coastal hazard vulnerability assessment.
Myers v. South Gippsland Shire Council (No 2)

Victorian Civil and Administrative Tribunal (2009), [2009] VCAT 2414

Subsequent to the submission of the coastal hazard vulnerability assessment required by the Tribunal in Myers v. South Gippsland Shire Council (No 1), which revealed that the proposed coastal residential lot would be inundated by flooding and storm surges by 2100, the Tribunal concluded that permission could not be granted for the proposal without a proper local policy or scheme in place to address the predicted issues.

Click here for Opinion

Case Index: Sorted by Case Title
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Ronchi v. Wellington Shire Council

Victorian Civil and Administrative Tribunal (2009), [2009] VCAT 1206

The Tribunal held that the proposed construction of two double-story dwellings in a coastal area placed too great an onus on the developers to prepare for the impacts of climate change. Drawing upon the decision in Myers v. South Gippsland Shire Council (No 1), the Tribunal held that the applicant should instead prepare a coastal hazard vulnerability assessment prior to receiving approval.

Click here for Opinion
Owen v. Casey City Council

Victorian Civil and Administrative Tribunal (2009), [2009] VCAT 1946

The Tribunal was asked to consider whether a coastal hazard vulnerability assessment was required before a development was approved by the Casey City Council. Drawing upon *Ronchi v. Wellington Shire Council*, the Tribunal held that the assessment was required.

Click here for Opinion
Cooke v. Greater Geelong City Council

Victorian Civil and Administrative Tribunal (2010), [2010] VCAT 60

David Cooke and others challenged a coastal housing development approved by the Greater Geelong City Council. Drawing upon Myers v. South Gippsland Shire Council (No 1) and Ronchi v. Wellington Shire Council, the Tribunal held that it would not approve developments without a coastal hazard vulnerability assessment even if the development was meritorious in all other regards.

Click here for Opinion
Taip v. East Gippsland Shire Council

Victorian Civil and Administrative Tribunal (2010), [2010] VCAT 1222

L. Taip challenged a housing development approved by the East Gippsland Shire Council on the grounds that it was not sufficiently planned to be resistant to climate change impacts. The Council argued that climate change impacts had been taken into consideration by proposing to raise the level of the development above the projected flood and sea levels that were expected to result from climate change. The Tribunal held that the response to address climate change impacts was not sufficient and that a more full and proper assessment of the risks and hazards needed to be conducted by the Council prior to giving approval.

Click here for Opinion
Alanvale Pty Ltd v. Southern Rural Water Authority

Victorian Civil and Administrative Tribunal (2010), [2010] VCAT 480

Alanvale Pty Ltd challenged the Southern Rural Water Authority’s decision to deny licenses for groundwater extraction. The Tribunal held that the Southern Rural Water Authority’s claim that there was a risk in over-allocating the groundwater supply was substantiated by the possibility of rainfall being scarce as a result of climate change.

Click here for Opinion
Kala Developments Pty Ltd v. Surf Coast Shire Council

Victorian Civil and Administrative Tribunal (2010) [2010] VCAT 2106
Victorian Civil and Administrative Tribunal (2011), [2011] VCAT 513

The Surf Coast Shire Council proposed to amend Kala Developments Pty Ltd’s coastal development permit to better suit the impacts of climate change. At the first mediation, both parties agreed that Kala Developments would complete a coastal hazard vulnerability assessment prior to further deliberation. The Tribunal held that in the principles of natural justice required that the respondent and all objectors be given an opportunity to give their views on the proposed amendments, in the light of the information contained in the information contained in the coastal hazard vulnerability assessment.

At a later hearing on the merits of the proposed amendments to the planning permit, the Tribunal found that the flood barrier system which the developer proposed to construct would be sufficient to address the risk of sea level rise at the site.

Click here for 2010 Decision
Click here for 2011 Decision
Blue Wedges Inc v. Minister for Environment, Heritage and the Arts

Federal Court of Australia (2008), *167 FCR 463*

Blue Wedges Inc challenged the decision made by the Minister for Environment, Heritage and the Arts to approve the Port of Melbourne Corporation’s proposal to deepen the shipping channels in Port Phillip Bay and the Yarra River. Blue Wedges objected to the Minister’s process of approval on three grounds: (1) the Minister had not taken into account the principles of ecologically sustainable development while considering the proposal, as required by section 136(2)(a) of the Environment Protection and Biodiversity Conservation (EPBC) Act; (2) the Minister had not adequately informed and consulted all other relevant ministers, including the Minister for Climate Change and Water, who could have a concern with the effect which the channel deepening project might have on sea levels and tidal level changes in the Bay, as required by section 131(1) of the EPBC Act; and (3) the Minister had failed to fully consider the impacts on listed threatened and migratory species as outlined by section 136(1)(a) of the EPBC Act. After thorough review of the claims made by the applicant, the court held that all considerations brought up by the applicant had been adequately met by the Minister in his review prior to issuing the approval for the proposal.

Click here for Opinion
Kennedy (on behalf of Sandon Point Aboriginal Tent Embassy) v. Minister for Planning (NSW)

Land and Environment Court of New South Wales (2010), [2010] NSWLEC 129

Roy “Dootch” Kennedy challenged the Minister for Planning’s approval of Stockland’s construction proposal. Kennedy objected to the Minister’s approval on four grounds under the Environmental Planning and Assessment Act: (1) the approval for the proposal was outside the Minister’s power because Stockland had made donations to the Labor Party of which the Minister was a member; (2) the rights and impacts on aboriginal people had not been sufficiently considered; (3) the assessment of the archaeological viability of the site was not adequate; and (4) potential flooding and extreme weather events caused by climate change had to be more thoroughly examined. The court held that all aspects of the Environmental Planning and Assessment Act had been upheld by the Minister in approving the proposal.
Byron Shire Council v Vaughan; Vaughan v Byron Shire Council

Land and Environment Court of New South Wales (2009), [2009] NSWLEC 88

After strong storms and increased coastal erosion, John and Anne Vaughan attempted to rebuild an interim sandbag wall that was previously approved by the city council in a 2001 development consent. The council sought an injunction from the court preventing the wall from being rebuilt, arguing that the council had a policy of planned retreat and that rebuilding the wall could cause damage to other properties, especially if it was built without the approval of the council. The Vaughan’s responded by bringing an action against the council, alleging breach by the council of the 2001 development consent. The court upheld the council’s request and issued an injunction preventing the wall from being rebuilt. The two parties later came to a settlement before the final hearing allowing the Vaughan’s to rebuild the wall using geobags and sand as opposed to rocks, which they had initially planned to use.

Click here for Opinion
Byron Shire Council v Vaughan; Vaughan v Byron Shire Council (No 2)

Land and Environment Court of New South Wales (2009), [2009] NSWLEC 110

Subsequent to Byron Shire Council v. Vaughan; Vaughan v. Byron Shire Council and the settlement reached between the parties, John and Anne Vaughan requested that the injunction preventing them from rebuilding the wall be discharged and the costs incurred be reserved. The court discharged the injunction and ordered that the costs relating to the injunction be reserved.

Click here for Opinion
Haughton v. Minister for Department of Planning and Ors

Land and Environment Court of New South Wales, [2011] NSWLEC 217

Ned Haughton challenged the approval granted by the Minister for Planning for two coal-fired power plants. The challenge was on the grounds that: (1) the Minister erroneously approved the plants on the basis that they were critical infrastructure projects; (2) the Minister had not fully considered the principles of ecologically sustainable development; and (3) the Minister had not considered the impact of the projects on climate change, which was required of him based on his duty to protect the public interest. While the Court upheld the standing of Mr. Haughton to bring the case, it dismissed his substantive claims on the basis that the decisions had been made within the power given to the Minister under Part 3A of the Environmental Planning and Assessment Act 1979 (NSW). Justice Craig emphasized that he could not review the merits of the Minister’s decision, and could only consider its legality. He concluded that the statute allowed the Minister to weigh competing considerations as he saw fit when determining what was in the public interest.

Click here for **Summons**

Click here for **Points of Claim**

Click here for **Decision**
Hunter Community Environment Centre Inc v. Minister for Planning and Delta Electricity

Land and Environment Court of New South Wales, [2012] NSWLEC 195

Hunter Community Environment Centre Inc challenged the Minister for Planning's approval of the refurbishment of a coal-fired power plant proposed by Delta Electricity. While several grounds of appeal were raised in submissions by the applicant, only two were pursued during the hearing. The first of these grounds for review was an alleged failure to comply with s 75I(2)(g) of the Environmental Planning and Assessment Act 1979 (NSW) which requires the Director-General's report to the Minister to include a statement relating to compliance with environmental assessment requirements. Secondly, the Applicant alleged that the statement of compliance in that report was misleading in relation to fly ash disposal measures. The Court dismissed both alleged grounds of review. In relation to the first ground, the Court disagreed with the applicant's interpretation of the relevant statutory provision. In relation to the second, the Court noted that the Minister had imposed a condition on the project relating to the disposal of fly ash and that his consideration of the issue had been sufficient.

Click here for Decision
Air Transport Association of America v. Secretary of State for Energy and Climate Change

EU Court of Justice, No. C-366/10 (Dec. 21, 2011)

U.S. airline operators filed a claim in the European Union Court of Justice seeking to avoid inclusion in the EU's Emissions Trading System on the grounds that it was invalid as applied to them and not justified by international law or specific arguments between the EU and the United States. The Court, confirming an earlier decision of its advocate general, rejected the claim, holding that the EU has the right to permit a commercial activity, in this instance air transport, to be carried out in its territory only on the condition that operators comply with the criteria that have been established by the EU. The court rejected the argument by the airlines that the ETS could not apply to flights that mostly take place outside of EU territory. A 2008 Directive requires that, beginning January 1, 2012, all airlines flying into, out of, and within the EU possess enough carbon allowances to cover their greenhouse gas emissions.

Click here for Summary of Decision
Click here for Decision
Genesis Power Ltd. v. Greenpeace New Zealand, Inc.

Supreme Court of New Zealand [2009] 1 NZLR 730 (Dec. 19, 2008)

A power company proposed to build a power station fueled by natural gas. This required a number of resource consents, including a discharge permit. Section 7(j) of the Resource Management Act of 1991 required consent authorities to have particular regard to “the benefits to be derived from the use and development of renewable energy.” Section 70A prevented consent authorities from considering applications for discharge permits regarding the effects of climate change except to the extent that the use and development of renewable energy enables a reduction in the discharge of greenhouse gases. The company argued that this exception only applied when the application involved the use of renewable energy. The court disagreed, holding that the exception applied to all applications whether they made use of renewable or non-renewable energy.

Click here for Opinion
Re River District Energy Limited Partnership

Canada, British Columbia Utilities Commission, 2011 Carswell BC 3538

British Columbia Utilities Commission granted a Certificate of Public Convenience and Necessity (CPCN) to River District Energy Limited Partnership (RDE), allowing RDE to construct and operate a District Energy Utility in southeast Vancouver. The project is found to serve the public interest and align with British Columbia’s energy objectives. The initial energy source will be natural gas; RDE plans to begin using waste heat generated by the Burnaby Waste to Energy Facility beginning in 2016. However, RDE is under no binding legal obligation to shift to a renewable energy source. The Commission is confident in the planned facility’s potential to reduce greenhouse gas emissions over its lifetime, despite a projected 40% increase in GHG emissions by RDE over the first four years of the project.

Click here for Decision
RWE Npower Renewables v. East Lindsey DC

UK Planning Inspectorate, Appeal Decision, September 29, 2011, Appeal Ref APP/D2510/A/10/2130539

An appeal by Npower Renewables requesting planning permission for a six-turbine wind farm in Lincolnshire, England was dismissed. Npower submitted an environmental statement (ES) with its 2006 application, and the Inspector recognized that the project would lead to a reduction in GHG emissions. However, the Inspector found that this project would have an “industrializing effect on the countryside” and would disrupt the local tourist trade, and that it could impair the success of coastal park and grazing marsh projects planned to improve biodiversity in the area. Balancing the reduction in GHG emissions which the project would provide with concern for the coastal sensitivity of the area, as well as potential negative effects on the landscape’s aesthetics, led the Inspector to conclude that the costs of the project would outweigh the benefits.

Click Here for Decision
Armstrong DLW GmbH v Winnington Networks Ltd

High Court of England and Wales, 2012, EWHC 10

Under the EU Emissions Trading Scheme (EU ETS), European Union Allowances (EUAs) are now classified as intangible property under English law. As a result of a fraudulent sale to Winnington of EUAs belonging to Armstrong, it was necessary to determine, among other things, their status under law. To determine the status of EUAs, the Court applied a three-part test identified in Re Celtic Extraction. In order for EUAs to be considered property, there must be statutory framework conferring an entitlement on their holder to an exemption from a fine, the “property” must be transferable under a statutory framework, and the “property” must have value. The Court classified EUAs as intangible property at common law, as they satisfy the three prongs of the test, and determined that since EUAs may be subject to restitutionary claims, Armstrong was entitled to a money judgment.

Click here for Opinion
Veolia v Shropshire Council

UK Planning Inspectorate, Appeal Decision, January 10, 2012, Appeal Ref APP/L3245/A/11/2146219

On appeal, planning permission was granted for a waste to energy facility as an extension to an existing recycling center in Shropshire, England. In response to appellant’s planning application and environmental statement, submitted in 2009, a number of rejections were made and the Shropshire County Council denied the application. The benefits versus the harms of several aspects of the project were assessed on appeal. The development is projected to have significant adverse effects on the character and appearance of the area, though these effects were found to be outweighed by the principal benefit, the diversion of 90,000tpa of residual waste from landfills, which, through the resulting reduction of GHG emissions, would make a significant contribution to addressing climate change. Other negative effects of the development were considered insignificant.

Click here for Decision
Re 2012-2013 Revenue Requirements and Rates In the Matter of the FortisBC Energy Utilities

Canada, British Columbia Utilities Commission, 2012 Carswell BC 1061

FortisBC Energy Utilities (FEU) applied for approval of its 2012-2013 Revenue Requirements, including $64.5 million for Energy Efficiency and Conservation expenditures. The Application was filed and reviewed during a period of significant and continuing change in terms of BC Government Energy Policy and Regulation with respect to the Clean Energy Act. A portion of the funds requested were for the purpose of meeting British Columbia’s energy objectives through the reduction of greenhouse gas emissions. BC policy relevant to FEU’s funding requests were the 2007 Greenhouse Gas Reduction Targets Act and the 2008 Carbon Tax Act. While not approving all of the requests of the FEU, the Commission Panel has approved much of what has been applied for. The Commission determined, in particular, that ratepayer cost should not be mitigated for planned alternative energy sources which are not implemented.

Click here for Decision
Deutsche Bank AG v Total Global Steel Ltd

High Court of England and Wales, 2012 EWHC 1201

Deutsche Bank (DB) sued Total Global Steel (TGS) for breach of contract for the sale of Certified Emissions Reductions (CERs), instruments created under the Kyoto Protocol to measure and limit greenhouse gas emissions under the European Union Emissions Trading System (EUETS). The CERs DB purchased from TGS had previously been “surrendered,” or used to demonstrate compliance with emissions limitation commitments. The Court ordered TGS to pay damages to DB, since the European Commission had announced in January 2010 a check that prevented surrendered CERs from being used for compliance purposes; this check rendered the CERs purchased by DB worthless.

Click here for Decision
Flachglas Torgau GmbH v Federal Republic of Germany

European Court of Justice (Grand Chamber) 2012 2 CMLR 17

Flachglas Torgau requested information about Germany’s allocation of emissions licenses during 2005-2007. The requested information was contained in internal documents produced by the Ministry for the Environment concerning legislation process for GHG emissions trading. The Ministry refused this request, citing the confidentiality of proceedings of public authorities. The 2003 Directive concerning public access to information provides that environmental information is generally considered public; however, the court upheld the Ministry’s decision to deny access to the documents requested.

Click here for Decision
Turp v Canada (Attorney General)

2012, Federal Court of Canada, 2012 FC 893, T-110-12

The Canadian executive branch has exclusive power to withdraw from treaties; the government’s decision to withdraw from the Kyoto Protocol is therefore not subject to judicial review. The Federal Court held that the 2007 Kyoto Protocol Implementation Act does not limit this inherent power of the executive branch, either expressly or by implication. Furthermore, the Canadian Parliament imposed no justiciable duty upon the government to comply with Kyoto commitments.
Clean Train Coalition Inc. v. Metrolinx

Superior Court of Justice - Ontario (Divisional Court), 2012 ONSC 6593

The applicant, the Clean Train Coalition Ltd., sought judicial review of a decision of the respondent Metrolinx to enter into a contract to purchase diesel multiple units ("DMUs"), which were to be used on an air-rail link between Toronto's Union Station and Pearson Airport. The applicant argued that Metrolinx exceeded its jurisdiction in entering the supply contract for DMUs, as it failed to first conduct a feasibility study with respect to electrification of the air-rail link. Subsection 2(1) of the Judicial Review Procedure Act, R.S.O. 1990, c. J.1 (the "JRPA") permits the court to exercise judicial review in circumstances where there has been an exercise or refusal to exercise a "statutory power of decision", defined as a decision deciding or prescribing the legal rights, powers, or privileges of a party. The court, rejecting the applicant's argument, held that the preamble did not confer any legal right, and also pointed out that the EBR provides specific mechanisms to address environmental complaints, which do not include judicial review. The application for judicial review was accordingly dismissed.

Click Here for Decision
Non-compliance Procedure of Greece Under The Kyoto Protocol

UNFCCC, Non-Compliance Committee of the Kyoto Protocol, CC-2007-1/Greece/EB

The case arose with respect to Greece’s failure to establish an initial report to facilitate the calculation of the Kyoto Protocol’s Parties’ assigned amount and to demonstrate its capacity to account for emissions and the assigned amount (Kyoto Protocol, article 5(1)). In particular, the maintenance of the institutional and procedural arrangements, the arrangements for the technical competence of relevant staff, and the capacity for timely performance of the Greek national system appeared as unresolved problems. On 17 April 2008, the enforcement branch thus determined that Greece was not in compliance with the guidelines for national systems and therefore not eligible to participate in the emission trading mechanisms under articles 6, 12 and 17 of the Protocol. In July and October 2008, Greece submitted revised reports and plans. On 13 November 2008, the branch decided that there no longer continued to be a question of implementation with respect to Greece’s eligibility, and that Greece was fully eligible to participate in the mechanisms under articles 6, 12 and 17 of the Protocol.

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Pulp Mills on the River Uruguay (Argentina v. Uruguay)

Judgment, I.C.J. Reports 2010, p. 14

In the Pulp Mills decision, the International Court of Justice made several important precisions with respect to environmental impact assessments' status in international law. In particular, the Court held that: “[..], the obligation to protect and preserve, under Article 41 (a) of the Statute, has to be interpreted in accordance with a practice, which in recent years has gained so much acceptance among States that it may now be considered a requirement under general international law to undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource.” (para.204). The Court further considered that an EIA should be conducted prior to the implementation of the project. (para.205). The Court nevertheless held that the content and scope of EIAs had not yet been defined by either general international law or by the Statute. Therefore, the Court considered that each State should determine EIAs' content in its domestic legislation.

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Hunter Environmental Lobby v. Minister for Planning
Hunter Environmental Lobby v. Minister for Planning (No 2)

Land and Environment Court of New South Wales, November 24, 2011, [2011] NSWLEC 221

The case relates to the approval of diverse extensions of a coalmine, leading to an increase of annual production of up to 20 million tones of coal. The Hunter Environment Lobby objected to the proposal, notably on the ground that the extensions would have an important impact on climate change. Nevertheless, the project was approved by the Planning Minister in November 2010 and the Hunter Environment Lobby appealed. In its decision, the Court distinguished between direct GHG emissions (Scope 1 GHG emissions) and indirect GHG emissions (Scope 2 GHG emissions), i.e. emissions from the consumption of purchased electricity. With respect to direct emissions, the Court held that it was lawful and reasonably implementable to take them into account in the approval process. The Court further highlighted that it was not discriminatory to do so as upcoming approvals would follow the same rule. However, the Court refused to impose any condition with respect to indirect emissions. The Court thus affirmed the approval, but subject to certain conditions, including a condition which required the offset of any direct GHG emissions from the mine. This condition could be suspended if another law or regulation was introduced which would cover these emissions.

Following this initial decision, the Australian Government introduced a carbon price, which was implemented through federal legislation. In light of this new scheme, in a subsequent decision the Court held that it was valid for the Minister to decide that the condition on the mine relating to offsetting of direct emissions was no longer necessary.

Click here for Decision
Click here for second Decision
Greenpeace Limited v Secretary of State for Trade and Industry

High Court of Justice, Queen’s Bench Division, Administrative Court, Judgment, 15th February 2007
[2007] EWHC 311 (Admin)

The Judgment relates to a 12-month consultation process announced in November 2005 by the Secretary of State for Trade and Industry regarding the Government’s review of its policy with respect to nuclear power stations. Greenpeace was among the parties that made submissions during the consultation. Despite many submissions against nuclear energy, the Secretary of State published a report in July 2006 announcing that the Government was favorable to the construction of new nuclear plants in the country. Greenpeace challenged that decision arguing that the consultation process had been flawed. Agreeing with Greenpeace’s allegations, the High Court declared the consultation process to have been “very seriously flawed” (para. 116). Notably, the Court reminded the Secretary of State that the Government had signed and ratified the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters and was thus bound by international law to provide full public consultation. Among other shortfalls, the Court highlighted that insufficient information was given to consultees, that the consultation document was seriously misleading, and that the consultation period was insufficient. Nevertheless, the Court held that the better outcome in the case was to grant declaratory relief, rather than a quashing order as asked by Greenpeace.

Click here for Decision
Xstrata Coal Queensland Pty Ltd & Ors v. Friends of the Earth - Brisbane & Ors

Queensland Land Court, [2012] QLC 013, March 27, 2012

Friends of the Earth and local land owners challenged an mining leases granted under the Mineral Resources Act 1989 (Qld) for the development of a new “mega” coal mine in Queensland, Australia, as well as the draft conditions for an environmental authority to operate the mine which were proposed by the relevant Minister under the Environmental Protection Act 1994 (Qld). While the claims made by landowners focused on the local impacts of the mine, such as potential water contamination and sound levels, Friends of the Earth argued that the lease and environmental authority should not be granted on the basis that the project will contribute to climate change and ocean acidification. The proponent for the proposed mine, Xstrata Coal, argued that they were under no obligation to disclose the “Scope 3” emissions of project during the environmental impact assessment process. Scope 3 emissions include indirect GHG emissions which occur at sites away from the mine, such emissions from transporting the coal and from its end-use in electricity production. Friends of the Earth argued that these scope 3 emissions must be considered when assessing the potential environmental impact of the mine. The Court held that it could only consider the environmental impacts of the mine itself, and not of other activities such as the transport of coal or its end-use. In addition, it held that while the direct GHG emissions of the mine may contribute to climate change, that this should not outweigh all other considerations in the assessment process for the mine, such as the potential economic benefit to the State of Queensland. The Court recommended that the approvals necessary for the mine be issued.

Click here for Decision
Paul v. Goulburn Murray Water Corporation & Ors

Victorian Civil and Administrative Tribunal, [2010] VCAT 1755, November 3, 2010

This case concerned a challenge to a decision by a local water authority, the Goulburn Murray Water Corporation, in Victoria, Australia, to issue two licenses under the Water Act 1989 (Vic) allowing the extraction of groundwater for use in irrigation on farms. The two permits at issue allowed the extraction of 490 and 594 ML (megaliters) per year respectively. Mr. Paul challenged the licenses on the grounds that the use of water would be unsustainable, particularly in light of the projected impacts of climate change and associated water shortages. While the Tribunal noted that there was some uncertainty about the impacts of climate change, and that uncertainty may lead to the application of the precautionary principle, it found that on the technical evidence before it that the water use would be sustainable taking into account the range of estimates for the impact of climate change on water levels in the region.

Click here for Decision
New Zealand Climate Science Education Trust v. National Institute of Water and Atmospheric Research Limited

High Court of New Zealand, Auckland Registry, [2012] NZHC 2297, September 7, 2012

The New Zealand Climate Science Education Trust applied for judicial review of climate data published by a government owned research institute. The Trust alleged that each set of data which had been published departed from “recognized scientific opinion” or contained “obvious deficiencies.” While he accepted that, in principle, decisions of the research institute could be subject to judicial review, Justice Geoffrey Venning dismissed the application. He held that courts should give considerable deference to specialist agencies in relation to their areas of expertise, and that on the facts of the case the research institute had used credible scientific methods to carry out its work and there was no basis for judicial review.

Click here for a Summary of the Decision
Click here for full text of the Decision
Able Lott Holdings Pty Ltd v City of Freemantle

Western Australia State Administrative Tribunal, [2010] WASAT 117, August 10, 2010

This case concerned a development application for retrospective approval of partially completed alterations and additions to an historic warehouse building. One of the principal issues related to potential flooding and the decision is the first to apply the State Coastal Planning Policy anticipating a 0.38 meter increase in sea level due to climate change. The Tribunal determined that the development application warranted conditional approval. With respect to potential flooding, the Tribunal found that the level of the water table over the lifetime of the development, including anticipated increase in the water table due to sea level rise by 2100, would not compromise the structural stability of the building or cause water ingress. Thus, the proposal did not warrant refusal because of potential for flooding. The development application was approved subject to 40 conditions including conditions to ensure that the development is carried out in a manner that is appropriate having regard to heritage and amenity considerations.
Carey v Murrindindi Shire Council

Victorian Civil and Administrative Tribunal, [2011] VCAT 76, January 24, 2011

At issue in this case was a proposal to build a community hall in an area that was badly burnt by bushfires in February 2009. Citizens objected to the proposal and appealed the Council’s decision to grant a permit for the building due to the fire risks associated with the proposal. The Victorian Civil and Administrative Tribunal relied upon the strong community need for the community hall but nevertheless recognized that a prudent approach was needed and that climate change predictions suggested that Victoria would experience more extreme fires in the future. Accordingly, the Tribunal dealt with the risk of loss of life with respect to bushfire risks by imposing conditions on the permit ensuring that the loss of life risks were reduced to a manageable level. To this respect, one interesting condition imposed by the Tribunal was that the community hall could not be occupied until an Emergency Management Plan had been prepared by the permit holder.
Clean Energy Regulator v MT Solar Pty Ltd

Federal Court of Australia, [2013] FCA 205, March 8, 2013

This case concerned the penalties to be imposed on an unlicensed electrician, the company which employed him to install solar panels and other related parties. As the electrician did not have the appropriate accreditation to install the solar panels, the company was not entitled to claim Renewable Energy Certificates (RECs) under the *Renewable Energy (Electricity) Act 2000* (Cth). The federal authority in charge of administering the issuance of RECs, the Clean Energy Regulator, sought civil penalties against the respondents for contravening the Act by providing false information as to the qualifications of the electrician. In discussing the factual background to the case, Justice Foster noted that a state government feed-in tariff offered for renewable energy projects had created significant market pressure for projects to be delivered quickly (the tariff was only available through 2016), and that there had been a shortage of qualified electricians to meet the demand.

Click here for the Decision
Environment Victoria Inc v Department of Primary Industries


The applicant, an NGO, submitted a request to the respondent under the *Freedom of Information Act 1982* (Cth) (FOIA) for documents relating to: the possible allocation of new licenses to mine brown coal in the Latrobe Valley; reductions to the premium solar feed-in tariff paid to consumers who contribute electricity to the power grid from solar panels; and changes to the planning controls over wind farms. The Department failed to respond to the request within 45 days (as required by the Act). After proceedings were commenced, some documents were produced and issues in dispute were eventually narrowed to four particular documents. Three of these documents related to allocation of licenses to mine coal, and the fourth related to the premium feed-in tariff scheme. In withholding these documents, the Department relied on an exception to FOIA which protects cabinet documents (for the three coal related documents), and an exception which protects internal working documents (in relation to all four documents). The Tribunal held that, with the exception of an introductory portion of one document, that the three coal license related documents were protected by the exception for internal working documents, as they had been prepared in order to brief the Minister on issues “of the utmost importance to Victorians.” The high level nature of the briefing documents, and the sensitivity of the issues involved, were considerations that weighed against their release under FOIA. The document relating to the premium feed-in tariff scheme was held not to be protected by any of the exceptions.

Click here for the Decision
Republic of Poland v. European Commission

European Court of Justice, Case T-370/11, Judgment of the General Court, 7 March 2013

Challenge brought by Poland against Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community. In support of the action, the Republic of Poland raised four pleas. The first alleged an infringement of the TFEU on the ground that the Commission did not take into account the specificity of each Member State in respect of fuel. The second plea concerned an alleged breach of the principle of equal treatment on the ground that the Commission did not take into account the difference in situation between the regions of the European Union. The third plea alleged a breach of the principle of proportionality. The fourth plea alleged that the Commission was not competent to adopt the contested decision. The General Court rejected all four grounds and the action was therefore dismissed. In particular, the General Court held that “the determination by the Commission of the heat and fuel benchmarks by using the reference performance of natural gas may be regarded as objectively justified” (para. 58).

Click here for the Decision
In the Matter of FortisBC Energy Inc.: Amendment to Rate Schedule 16 on a Permanent Basis

Canada, British Columbia Utilities Commission, 2013 Carswell BC 1671

FortisBC Energy Inc. (FEI) applied to the British Columbia Utilities Commission for approval of several proposals related to its Liquefied Natural Gas business. The commission reviewed each proposal, ranging from matters of supply rate methodology to storage reporting requirements and incentive contracts, etc. The commission considered many of the proposals in light of promulgated greenhouse gas reduction regulation and approved some of the proposals while denying others.
Agrargenossenschaft Neuzelle eG v. Landrat des Landkreises Oder-Spree

European Court of Justice, [2013] EUECJ C-545/11

This case was a request for a preliminary ruling on two 2009 amendments to the agricultural rules in the Council Regulation that establish economic support schemes for farmers. The support scheme provided direct income support to farmers, however it was amended such that all direct payments beyond a certain amount should be reduced by a certain percentage each year. The savings made through these reductions would then be used to finance measures under the rural development policy, in light of the “new and demanding challenges” faced by the agriculture sector, “such as climate change and the increasing importance of bio-energy, as well as the need for better water management and more effective protection of biodiversity.” The Preamble also noted that Parties to the Kyoto Protocol, the EU and its member states are called upon to “adapt its policies in the light of climate change considerations.”

The Court reviewed two issues: (1) whether a new provision to the Regulation to reduce the amount of direct payments to farmers was valid, against an existing provision that already set the amount, in light of the principle of protecting legitimate expectations; (2) and whether a four percent increase for farmers with larger holdings exceeding 300,000 euros violates the principle of non-discrimination. The Court ruled that the purpose of the earlier provision was to establish support schemes for farmers, and that the decreases in direct payments, as well as the percentage of reductions were valid, and did not violate any applicable principles of EU law.

Click here for the Decision
In the Matter of an Application by Brian Quinn and Michael Quinn

Northern Ireland, The High Court of Justice in Northern Ireland, Queens Bench Division [2013] NIQB 24

The applicants were brothers who owned lands in Northern Ireland. They sought judicial review of a Planning Commissioner’s refusal to permit their request to develop a renewable energy wind-farm on their lands. The permit process was based on a balancing exercise weighing the wider environmental, economic and social benefits of a project against its adverse impact. The court accepted the brothers’ assertion that the Commissioner’s conduct of the test proceeded on a material mistake of fact. In particular, the Commissioner had failed to properly consider the environmental, economic and social benefits of the wind farm, including the importance of renewable energy generation to the UK meeting its greenhouse gas emissions targets.

Click here for the Decision

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Royal Forest and Bird Protection Society of New Zealand Incorporated v Buller Coal Limited

New Zealand, The High Court of New Zealand, 2012, NZHC 2156

Buller Coal received a permit to conduct coal mining activities at the Escarpment Mine in New Zealand. The appellant challenged the environment court’s decision in favor of Buller, and raised two questions under the country’s 1991 Resource Management Act. The first: Under section 104(1) of the Act, does the decision maker have to consider the contribution that the subsequent emissions will make towards climate change. The second: Under section 7(i) of the Act, must the decision-maker must give particular regard to the effects of climate change, including the contribution that the subsequent emissions will have towards the effects of climate change. The court affirmed the decision of the environment court and dismissed the appeal. The court surveyed domestic and international considerations and opted for a narrow reading of the Act, stating that a full consideration of climate effects in matters like these must await the introduction of a national environmental standard in New Zealand.

Click here for the Decision
Imported Motor Vehicle Industry Association Incorporated v Minister of Transport HC
Wellington CIV-2011-485-1972

New Zealand, The High Court of New Zealand, 2011, NZHC 1702

The Imported Motor Vehicle Industry Association (IMVIA) sought judicial review of the Transport Ministry’s emissions standards for used cars imported into New Zealand. New Zealand has no domestic car manufacturing industry and imports its vehicles. In 2007, the Transport Ministry opted for a rule that would implement an emissions standard for used imports, in lieu of an outright rolling age ban on used cars. The IMVIA objected to the ministry’s approach, claiming that in practice it would actually increase the average age of the nation’s fleet and would do nothing to reduce pollution. After examining the rulemaking process, the court dismissed the IMVIA’s application for review.

Click here for the Decision
Industrie de bois de Vielsalm & Cie v. Region Wallone

European Union Court of Justice [2013] C-195/12

European Union adopted Directive 2004/8/EC to promote high-efficiency cogeneration and reduce greenhouse gas emissions. Under the Directive, Member States are to adopt certain support mechanisms to encourage cogeneration. In implementing the Directive, Walloon decided to exclude biomass from wood, because of the potentially negative environmental consequences. Industrie de bois de Vielsalm (IBV), which operates a cogeneration plant from sawmill waste, applied to the Walloon Government for green certificates under the support mechanism and was rejected. IBV challenged the refusal arguing that the exclusion of biomass from wood (1) was inconsistent with the Directive and (2) violated the EU Charter of Fundamental Rights. The Constitutional Court of Belgium referred these issues to the EU Court of Justice. The Court of Justice found Walloon’s interpretation of biomass was permissible under the Directive given its purpose. Furthermore, the Court found that while Member States were subject to the equal treatment and non-discrimination clauses of EU’s Charter of Fundamental Rights in implementing the cogeneration support mechanism, the Walloon Government did not defy those clauses when it excluded wood and wood waste from its biomass support scheme.

Click here for the Decision
European Commission v. Republic of Latvia

European Union Court of Justice [2013] C-267/11

Latvia brought an action for annulment of the contested decision of its national allocation plan (NAP) for the 2008-2012 period arguing that the Commission’s request for further information was not timely under Art 9.3 Directive 2003/87. The General Court annulled the contested decision, and the Commission appealed. The court upheld the annulment.
West Coast Ent Inc v Buller Coal Ltd

Supreme Court of New Zealand [2013] NZSC 87

Buller Coal Ltd and Solid Energy Ltd both applied to West Coast Regional Council and the Buller District Council for resource consents under the Resource Management Act of 1991 to mine coal for export purposes. At issue was whether the High Court wrongly upheld a declaration that the end use of the coal was irrelevant to the resource consents required under the act. The Supreme Court dismissed the appeal, finding that the purpose of the 2004 Amendment Act precluded consent authorities from taking into account indirect discharges of greenhouse gases in considering applications for resource consents.

Click here for the Decision

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Nucifora v. Valuer-General

Queensland Land Court [2013] QLC 19

Nucifora appealed a land valuation in an Australia state court asserting that the land was overvalued because it did not take into account permanent changes in weather patterns due to climate change. The judge dismissed the appeal, finding that Nucifora had failed show that the farm was permanently devalued as a result of climate change. In its reasoning, the court noted that "climate change is “still a subject of considerable public debate.”

Click here for the Decision
Copley v Logan City Council & Anor

Queensland Planning and Environment Court [2003] QPEC 39

Copley challenged Logan City Council's approval of a development application in an Australian state court asserting that the proposed homes violated the Local Government (Planning and Environment) Act of 1990 because they were impermissibly susceptible to flooding due to the impacts of climate change. The applicants motioned to strike the challenge. The judge denied the motion and permitted a substantive hearing on the issue.

Click here for the Decision
Edmond Golf Pty Ltd v Frankston CC

Victorian Civil and Administrative Tribunal [2010] VCAT 1183

Applicant challenged the denial of a planning permit application to construct an apartment building in an Australian state court. The County's planning scheme requires plans to take into account sea level rise and other coastal hazards associated with climate change. The court found that no assessment was necessary because the flood risks were low. Based on this and other non-climate issues, the court granted the permit subject to conditions including stormwater drainage requirements.

Click here for the Decision
Tauschke v East Gippsland SC

Victorian Civil and Administrative Tribunal [2009] VCAT 2231

Tauschke sought review in an Australian state court of a residential building permit that denied him the right to build on his coastal property because of sea level requirements and coastal hazard management considerations regarding coastal impacts of climate change. Based on expert testimony, the court found that the land could be developed in a manner that managed flood risks and amended the condition of the permit to provide for such requirements.
Wade v Warrnambool CC & Anor

Victorian Civil and Administrative Tribunal [2009] VCAT 2177

Applicant challenged the issuance of a planning permit for a new dwelling near wetlands in an Australian state court. The court upheld the challenge stating that there had been insufficient consideration of flooding due to sea level rise; therefore, the permit was inconsistent with the local planning scheme.

Click here for the Decision
Suburban Blue Print Pty Ltd v Hobsons Bay City Council

Victorian Civil and Administrative Tribunal [2010] VCAT 1272

Applicant challenged the denial of a construction permit for two dwellings in part because of vulnerability to inundation due to climate change and storm surges. The Australian state court granted the permit, reasoning that the proposed dwelling’s “almost-appropriate” raised floor level was acceptable given the fact that a large number of homes in the community were likely to flood.

Click here for the Decision
Online Resources:

- Australian Climate Justice Program
  http://www.cana.net.au/ACJP/

- Climate Justice Programme
  http://www.climatelaw.org/

- Global Climate Law Blog
  http://www.globalclimatelaw.com/

- Climate Change Law: Australian and Overseas Developments
  http://blogs.unimelb.edu.au/peel_climatechange/

Secondary Sources:

See: CCCL’s Climate Change Law Bibliography.