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Non U.S. Climate Change Litigation Case Index
(Sorted by Case Title)

http://www.law.columbia.edu/centers/climatechange
# Non U.S. Climate Change Litigation Case Index
(Sorted by Case Title)

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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] VG 10 A 215.04 (Germany)

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.
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.
Drake-Brockman v. Minister for Planning

Land and Environment Court of New South Wales [2007] 158 LGERA 349 (Australia)

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

Additional Information:

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Back to Climate Chart
Environmental Defence Society v. Auckland Regional Council and Contact Energy Ltd

Environment Court [2002] 11 NZRMA 492 (New Zealand)

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.

Click here for Decision

Additional Information:
Friends of the Earth Canada v. The Governor in Council et al.

Federal Court [2008] FC 1183 (Canada)

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] NRRMA 541 (New Zealand)

New Zealand Environment Court granted consent for a wind farm. The Franklin District Council refused consent for the project on the basis that it 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 (Australia)

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.

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, Administrative Court [2007] EWHC 1957 (United Kingdom)

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:

Click here for Decision
Minister for Planning v. Walker

Court of Appeal of the Supreme Court of New South Wales [2008] 161 LGERA 423 (Australia)

The Minister for Planning approved a residential development project, and the respondent challenged the approval in the Land and Environment Court. The lower court found that the Minister erred in failure to apply ecologically sustainable development (ESD) principals when approving the project. 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. On appeal, the New South Wales Court of Appeal overturned the lower court’s decision, holding that while the Environmental Planning and Assessment Act 1979 required the Minister to take into account the “public interest,” the Minister was under no obligation to consider ESD principles.

Additional Information:
Perry v. Hepburn Shire Council

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

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] 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:
Queensland Conservation Council Inc. v. Xstrata Coal

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

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:

Click here for Decision
R. (On the Application of Littlewood) v. Bassetlaw DC

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

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.

Click here for Decision

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

Victorian Civil and Administrative Tribunal [2004] 140 LGERA 100 (Australia)

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.

Additional Information:
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.
Société Arcelor Atlantique et Lorraine v. Premier minister

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.

Click here for Decision

Additional Information:
Taralga Landscape Guardians Inc. v. Minister for Planning

Land and Environment Court of New South Wales [2007] 161 LGERA 1 (Australia)

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] (United Kingdom)

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.

Decision Unavailable

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

Federal Court of Australia [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), (United States)

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, Administrative Court [2009] EWHC 463 (United Kingdom)

A United Kingdom court dismisses an application by the “Stop Stansted Expansion” 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.

Additional Information:
Stuart Dimmock v. Secretary of State for Education and Skills

Queen’s Bench Division, Administrative Court (1991), [2007] EWHC 2288 (United Kingdom)

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.

Click here for Decision

Additional Information:
Aldous v. Greater Taree City Council and Another

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

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] VCAT 1545 (Australia)

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.

Additional Information:
Northcape Properties v. District Council of Yorke Peninsula

South Australian Supreme Court [2008] SASC 57

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.

Additional Information:

Click here for Decision
Charles & Howard Pty Ltd v. Redland Shire Council

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

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 Union)

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.

Click here for Decision

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

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

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 (European Union)

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. The Court held that the Commission did not properly examine the NAP and infringed on the principle of sound administration.

Click here for Decision
EnBW Energie Baden-Württemberg AG v. Commission of the European Communities

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

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 (European Union)
Court of First Instance [2007] Case T-27/07 (European Union)

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.

Case T-489/04 [Decision]
Case T-27/07 [Decision]

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Back to Climate Chart
Greenpeace New Zealand v. Northland Regional Council

High Court of New Zealand (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.
Meridian Energy Ltd et al v. Wellington City Council

Environment Court of New Zealand [2007] W031/07 NZEnvC 128

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.

Click here for Decision

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

Land and Environment Court of New South Wales [2009] NSWLEC 213 (Australia)

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.

Additional Information:

Click here for Decision
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.

Click here for Decision

Additional Information:
R. (on the application of People & Planet) v. HM Treasury

Queen’s Bench Division, Administrative Court [2009] EWHC 3020 (United Kingdom)

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.

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:
Drax Power and others v. Commission of the European Communities

Court of First Instance [2007] Case T-130/06 (European Union)

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.

Click here for Decision

Additional Information:
Fels-Werke GmbH v. Commission of the European Communities

Court of First Instance [2007] Case T-28/07 (European Union)

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
Buzzi Unicem SpA v. Commission of the European Communities

Court of First Instance [2008] Case T-241/07(European Union)

Applicant Italian cement producer sought to annual 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.

Additional Information:

Click here for Decision
Góraźdże Cement S.A. v. Commission
Laflare Cement S.A. v. Commission
Dyckerhoff Polska sp. z o.o. v. Commission
Grupa Ożarów S.A. v. Commission
Cementownia "Warta" S.A. v Commission
Cementownia "Odra" S.A. v Commission
BOT Elektrownia Bełchatów S.A. and others v. Commission
Cemex Polska sp. z o.o. v Commission

Case T-193/07 Decision
Case T-195/07 Decision
Case T-196/07 Decision
Case T-197/07 Decision
Case T-198/07 Decision
Case T-199/07 Decision
Case T-208/07 Decision
Case T-203/07 Decision

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 [2007] O.J. No. 2527 (Canada)

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.

Click here for Decision

Additional Information:
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. Transboundary EIA Request

Additional Information:

- Greenpeace Press Release
- Environmental Law Service
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
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 (UNFCCC), 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:

Case Index: Sorted by Case Title
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Pembina Institute for Appropriate Development, et al v. Attorney General of Canada and Imperial Oil

Federal Court of Canada [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.

Click here for Decision

Additional Information:
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.
Environmental activists brought suit against a state-owned power company, seeking a declaratory judgment that one of their power stations had 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’s motion for summary dismissal was denied on March 22, 2010, although Justice Pain did dismiss the applicant’s 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.

Macquarie appealed the court’s finding that it was subject to implied CO₂ emissions limits. The implicit conditions were based on common law principles that require prevention of emissions in excess of levels that could be achieved by exercising “reasonable regard and care for the interests of others and the environment.” The court of appeals reversed the lower court’s decision, reasoning that these common law principles only protected private rights (such as a nuisance claim) and were not applicable to a permit granted under a statute.
Professor Andrew Weaver, a renowned Canadian climate scientist, filed suit against the *National Post*, its publisher, and several journalists for defamation. Dr. Weaver’s claims arose out of the defendants’ publication of statements that allegedly injured Dr. Weaver’s reputation as a climate scientist in the context of the “Climategate” controversy. Plaintiff Weaver sought an injunction requiring the newspaper to remove the allegedly false statements from its website and from any sites where the statements were reposted. The Supreme Court of British Columbia found that the defendants had defamed Dr. Weaver and that their statements were not protected by the defense of fair comment because the facts upon which they relied were false. The Court awarded Dr. Weaver $50,000 in general damages, and directed the defendants to remove the offending articles, require third parties to cease republication, and publish a retraction.

Click here for Decision
Afton Chemical Limited v. Secretary of State for Transport

European Court of Justice [2010] Case C-343/09 (European Union)

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.

Click here for Opinion
Rockware Glass Ltd. v. Chester City Council

Queen’s Bench Division, Administrative Court [2005] EWHC 2250 (United Kingdom)

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.
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.

Click here for Opinion

Additional Information:
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
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.

Click here for Opinion

Additional Information:
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:
City of Bradford Metropolitan Council v. Woodhead and Sons Ltd.

[1995] 10 P.A.D. 243 (United Kingdom)

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 harm 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 [2008] (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.
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.
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

Supreme Court of Spain, Administrative Litigation Division (Section 5) Appeal No. 259/2005

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.

Click here for Opinion

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.
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.
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.
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.
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.

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**Additional Information:**

Click here for [online source](http://www.law.columbia.edu/centers/climatechange)

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 allowances 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
Director of Public Prosecutions v. Fraser and O’Donnell

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

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.
Australian Competition and Consumer Commission v. GM Holden Ltd

Federal Court of Australia [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
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.

Click here for Opinion
Australian Competition and Consumer Commission v. De Longhi Australia Pty Ltd

Federal Court of Australia

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

Federal Court of Australia

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.

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Australian Competition and Consumer commission v. V8 Supercars Australia Pty Ltd

Federal Court of Australia

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.

Click here for Press Release
Australian Competition and Consumer Commission v. Prime Carbon Pty Ltd

Federal Court of Australia [2010]

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] 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] VCAT 1022 (Australia)

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] VCAT 2414 (Australia)

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.
Ronchi v. Wellington Shire Council

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

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] VCAT 1946 (Australia)

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.
Cooke v. Greater Geelong City Council

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

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] VCAT 1222 (Australia)

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.
Alanvale Pty Ltd v. Southern Rural Water Authority

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

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] NSWLEC 129 (Australia)

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.

Click here for Decision
Byron Shire Council v Vaughan; Vaughan v Byron Shire Council

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

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.
Byron Shire Council v Vaughan; Vaughan v Byron Shire Council (No 2)

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

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.
Haughton v. Minister for Department of Planning and Ors

Land and Environment Court of New South Wales [2011] NSWLEC 217 (Australia)

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 (Australia)

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

European Union Court of Justice [2011] No. C-366/10

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.
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

British Columbia Utilities Commission [2011] Carswell BC 3538 (Canada)

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.
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

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Re 2012-2013 Revenue Requirements and Rates In the Matter of the FortisBC Energy Utilities

British Columbia Utilities Commission [2012] Carswell BC 1061 (Canada)

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.
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.
Turp v Canada (Attorney General)

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.

Click here for Decision
Clean Train Coalition Inc. v. Metrolinx

Superior Court of Justice - Ontario (Divisional Court) [2012] ONSC 6593 (Canada)

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 [2007] 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.
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.

Click here for Decision
Hunter Environmental Lobby v. Minister for Planning
Hunter Environment Lobby v. Minister for Planning (No 2)

Land and Environment Court of New South Wales [2011] NSWLEC 221 (Australia)
Land and Environment Court of New South Wales [2012] NSWLEC 40 (Australia)

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.
Greenpeace Limited v Secretary of State for Trade and Industry

Queen’s Bench Division, Administrative Court, Judgment, [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 (Australia)

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 (Australia)

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 Ltd

New Zealand Court of Appeal [2013] NZCA 555
(Appeal of decision of the High Court of New Zealand [2012] NZHC 2297)

The New Zealand Climate Science Education Trust (Trust) sought judicial review of climate data published by a government owned research institute. The Trust contended that the institute had employed the wrong methodology to adjust historic temperature data. The High Court 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. The court ordered the Trust to pay close to $90,000 in court fees for its challenge.

The New Zealand Court of Appeal upheld the award, agreeing with the High Court that the “public interest grounds” for the challenge did not justify a reduction in its liability.

Click here for the Court of Appeal Decision
Click here the High Court Decision
Able Lott Holdings Pty Ltd v City of Freemantle

Western Australia State Administrative Tribunal [2010] WASAT 117

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.

Click here for the Decision
Carey v Murrindindi Shire Council

Victorian Civil and Administrative Tribunal [2011] VCAT 76 (Australia)

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.

Click here for the Decision
Clean Energy Regulator v MT Solar Pty Ltd

Federal Court of Australia [2013] FCA 205

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

Victorian Civil and Administrative Tribunal [2013] VCAT 39 (Australia)

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 [2013] Case T-370/11 (European Union)

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 Fortis BC Energy Inc.: Amendment to Rate Schedule 16 on a Permanent Basis

British Columbia Utilities Commission [2013] Carswell BC 1671 (Canada)

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

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

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.
Imported Motor Vehicle Industry Association Incorporated v Minister of Transport HC Wellington CIV-2011-485-1972

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](http://www.law.columbia.edu/centers/climatechange)
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.

Click here for the Decision
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.
Nucifora v. Valuer-General

Queensland Land Court [2013] QLC 19 (Australia)

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.”
Copley v Logan City Council & Anor

Queensland Planning and Environment Court [2003] QPEC 39 (Australia)

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 (Australia)

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 (Australia)

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 (Australia)

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.
Suburban Blue Print Pty Ltd v Hobsons Bay City Council

Victorian Civil and Administrative Tribunal [2010] VCAT 1272 (Australia)

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.
Billerud Karlsborg AB v. Naturvardsverket

European Court of Justice (Second Chamber) [2013] Case C-203/12

The Swedish environmental protection agency, imposed penalties on the Billerud companies for failing to surrender credits under the EU Emissions Trading Scheme in 2006. The Billerud companies challenged the penalties arguing that since the failure was due to an internal error and the companies had a sufficient number of allowances at the time, they should be excused. The European Court of Justice (CJEU) found that under Directive 2003/87/EZ, penalties for failure to surrender credits still apply even if the entity held a sufficient number of allowances at that time. In addition, the CJEU found that the penalty was a lump sum and may not be varied by a national court on the basis of the principle of proportionality.

Click here for the Decision
Iberdrola S.A. et al., Judgement of the Court (Fifth Chamber) of 17 of Oct. 2013

European Union Court of Justice (Fifth Chamber) [2013] Case C-566/11

Spain amended its system for purchasing wholesale electricity by reducing the remuneration of electricity production to remove unfair windfalls for electricity producers caused by issuance of allowances under the EU Emissions Trading System free of cost. Electricity producers challenged the measure asserting that it was contrary to Directive 2003/87/EZ (establishing the EU Emissions Trading System) because it neutralized the ‘free of charge’ nature of emissions. The EU Court of Justice found that the Directive does not preclude remuneration for electricity producers for the purpose of counterbalancing windfall profits resulting from the allocation of emission allowances. In addition, the court found that the legislative measure does not remove the incentive to reduce greenhouse gas emissions and was thus not inconsistent with the goals of the Directive.

Click here for the Decision
Dual Gas Pty Ltd & Ors v Environment Protection Authority

Victoria Civil and Administrative Court [2012] VCAT 308 (Australia)

The EPA issued a works approval to Dual Gas for a 300 MWe power station for the development of a project involving new power generation technology from coal and natural gas. Four objectors challenged the approval in an Australia state court, including Environment Victoria, which asserted that the project would be inconsistent with Victoria’s State Environment Protection Policy (SEPP). Dual Gas challenged the objectors standing, sought review of conditions on the works approval requiring a specific level of operation efficiency, SO2 capture, and noise attenuation, and sought to reinstate the originally proposed generating capacity of 600 MWe. The court found that three of the four objectors had standing because they had interests that would be affected by the project. However, the court rejected their challenges finding that the project was consistent with ‘best practices’ requirements and the general goals of the SEPP. The court granted Dual Gas’s application and raised the capacity to 600 Mwe, but refused to remove the conditions.

Click here for the Decision
McCulloch v Bass Coast SC

Victoria Civil and Administrative Court [2007] VCAT 363 (Australia)

Applicants challenged a permit in Australia state court for the development of levees and bunds to protect the coastal area from sea level rise. The applicants asserted that the proposal (1) would not benefit the public because the levees were being built to satisfy a condition to a permit for a proposed retirement village development; and (2) did not respect the value of the coastal environment. The court found the levees would benefit the public; however, it set aside the permit because the impacts on the dune system were not adequately considered and did not sufficiently address flood risks to outweigh those concerns.

Click here for the Decision
Bernhard Seifert v Colac-Otway Shire Council

Victoria Civil and Administrative Court [2009] VCAT 1453 (Australia)

An Australia state court approved a permit for the subdivision on land subject to condition that the owner demonstrate how the development will deal with and minimize flood risks to the satisfaction of the Responsible Authority prior to commencing development. The approval was based on two expert reports pertaining to effects of sea level rise due to climate change.
W & B Cabinets v Casey CC

Victoria Civil and Administrative Court [2009] VCAT 2072 (Australia)

Applicant land developer challenged the local council’s requirement that it conduct a full coastal hazard vulnerability assessment (CHVA) prior to approval of a planning permit in an Australia state court. Where a local water agency had advised that the development would be acceptable as long as floor levels were designed taking into account sea level rise, the court found that the city council could not require a CHVA prior to permit approval. However, the court denied the permit on other grounds.

Click here for the Decision
West Gippsland Catchment Management Authority v East Gippsland Shire Council

Victoria Civil and Administrative Court [2010] VCAT 1334 (Australia)

An Australia state court overturned approval for a planning permit primarily because it did not meet vehicle access requirements. The court also determined that the permit could not be granted because the proposal did not take into account increased flooding risks due to climate change. The court found that had the proposal met other requirements, a coastal hazard vulnerability assessment would be required prior to permit approval.

Click here for the Decision
Bock v Moyne SC

Victoria Civil and Administrative Court [2010] VCAT 1905 (Australia)

Applicant sought approval of a planning permit and challenged the local council’s request for a coastal hazard vulnerability assessment (CHVA) considering the impact of increased inundation or changing sea level conditions due to climate change prior to permit approval. The Australia state court found that the council must give the applicant opportunity to demonstrate why a CHVA was not required for the specific review site and take this information into account prior to the Council determining whether a CHVA is required.

Click here for the Decision
Campbell & Ors v Mornington Peninsula SC

Victoria Civil and Administrative Court [2010] VCAT 1457 (Australia)

Applicants challenged a redevelopment proposal because of failure to conduct a coastal hazard vulnerability assessment, among other concerns. While affirming the importance of taking a cautious approach to coastal vulnerability issues, an Australian state court found, based on expert testimony, that the proposal did not present any unreasonable coastal vulnerability issues. The court affirmed the local council’s approval of the permit subject to certain conditions, including drainage requirements.

Click here for the Decision
Rainbow Shores P/L v Gympie Regional Council & Ors

Planning and Environment Court of Queensland [2013] QPEC 26 (Australia)

Applicant appealed denial of a planning permit for a proposed integrated resort and residential community. The proposal was challenged on a number of grounds including concerns about erosion and storm surges. The Australia state court dismissed the appeal, finding that the proposal did not adequately address the site’s increased vulnerability to erosion and storm surges as a result of sea level rise.

Click here for the Decision
Bulga Milbrodale Progress Association Inc. v. Minister for Planning and Infrastructure and Warkworth Mining Limited

New South Wales Land and Environment Court [2013] NSWLEC 48 (Australia)

Plaintiffs appealed the approval of a mining project that would expand a coal mine into areas previously designated as “non-disturbance areas” and extend the mining permit for ten years. The court overturned the approval due to significant adverse impacts including reduced biodiversity. In assessing biodiversity concerns, the court considered vulnerability to climate change.

Click here for the Decision
Ironstone Community Action Group Inc. v. NSW Minister for Planning and Duralie Coal Pty Ltd.

New South Wales Land and Environment Court [2011] NSWLEC 195 (Australia)

Plaintiff challenged the extension of an existing coal mine due to its negative effects on biodiversity, water quality, threatened species, and health. Specifically, the Giant Barred Frog, a threatened species, would be negatively impacted through habitat destruction and the mine’s direct contribution to climate change. The Australia state court re-approved the extension, but under the condition that the defendant prepare and implement a Biodiversity Management Plan for the project.

Click here for the Decision
Ison v Richmond Valley Council [2012] NSWLEC 1167

New South Wales Land and Environment Court [2012] NSWLEC 1167 (Australia)

Applicant appealed the refusal of a planning permit for a development project. The Australian state court dismissed the appeal reasoning that the proposed development would not be consistent with the Richmond Valley Local Environmental Plan 2012 because it would not ensure adequate safety from flood risks. In accordance with the plan, flood levels were determined taking into account the effects of climate change.

Click here for the Decision
R. on the application of Griffin v. Newham London Borough Council

Queen’s Bench Division, Administrative Court [2011] EWHC 53 (United Kingdom)

Fight the Fights, an unincorporated local resident group challenged the decision of the Newham London Borough Council to grant consent to increase the number of flights permitted per year at the London City Airport because of concerns regarding impact on local residents and increased greenhouse gas emissions. The resident group challenged the consent on two grounds: (1) it was unlawful for the Council to grant the application without considering a change in the government policy on aviation and climate change; and (2) the Council failed to consult surrounding Councils and residents of those Burroughs. The court denied the challenge on both grounds. With respect to climate change and aviation, the court found that the increased flights did not contradict the current government policy, they were compatible with the 2050 reductions target and were consistent with the policy of making the best use of existing infrastructure.

Click here for the Decision
In the Matter of subsection 17(40) of the Planning Act, R.S.O 1990, P.13 as amended

Ontario Municipal Board [2013] Carswell Ont 15294 (Canada)

The City of Brampton filed a motion seeking partial approval of the amendment its 2006 Official Plan. The plan was amended to include climate change considerations with respect to transportation, sustainable development, climate change adaptation and mitigation, and energy efficiency and management. The partial approval was granted.

Click here for the Decision
Lester v Minister for Planning and Infrastructure

Land and Environment Court New South Wales [2011] NSWLEC 213 (Australia)

Applicant challenged the Planning Assessment Commission’s approval of a coal mining project on a number of grounds under the *Environmental Planning and Assessment Act 1979*. The applicant alleged that the Commission’s decision was unreasonable because it was based on erroneous calculations of greenhouse gas emissions submitted in the application. Finding that the application had no merit, the court dismissed the application and ordered the applicant to pay the respondents’ costs.

Click here for the Decision
Newton and Anor v Great Lakes Council

New South Wales Land and Environment Court [2013] NSWLEC 1248 (Australia)

A landowner challenged a local council decision to grant a planning permit to build a house on two conditions: (1) the development consent would only last for twenty years, and (2) the house must be designed to withstand 2033 sea level rise conditions. The Australian state court found in part for the landowner, rejecting the first condition but allowing the second. The court found the time limit imposed under the first condition was unreasonable, especially given the presence of the second condition.
Pepperwood Ridge Pty Ltd v Newcastle City Council

Land and Environment Court of New South Wales [2009] NSWLEC 1046 (Australia)

The Australian state court upheld an appeal against the refusal of a permit to construct a senior living facility. The local council denied the permit on the grounds that the proposed facility did not comply with the climate change principles designated in local planning documents because it was not sited in the northerly direction. The court disagreed with the local council, finding adequate design for climate, reasoning that non-compliance with orientation provisions did not necessarily warrant refusal of an application, especially where the natural topography did not justify such orientation.
Smith v. Pittwater Council

Land and Environment Court of New South Wales [2013] NSWLEC 1145 (Australia)

A landowner appealed a local council’s refusal of a planning permit in Australian state court. The council had found that the proposed development would not ensure adequate safety from flood risks given increased flood levels from climate change. Allowing the use of more conservative risk estimates than those employed by the council, the court found that the risk was not sufficient to warrant rejection as long as the permit was subject to certain flood planning conditions.

Click here for the Decision
Spencer v Commonwealth

High Court of Australia [2010] HCA 28
Full Court Federal Court of Australia [2009] FCAFC 38
Federal Court of Australia [2008] FCA 1256

The appellant challenged two state laws alleging that the legislation, which prohibited the clearing of native vegetation on his property, were an unjust acquisition of his property interests, including interests in carbon sequestration. The Federal Court of Australia summarily dismissed the appeal, finding that the appellant had no reasonable prospect of success because the laws did not effect or authorize the acquisition of the appellant’s property. On appeal, the Full Court upheld the dismissal.

The appellant appealed again to the High Court of Australia. The High Court found that the proceeding should not have been dismissed because the possibility remained that the laws are invalid due to the informal arrangement between the State and the Commonwealth.
Terminals Pty Ltd v Greater Geelong City Council

Victorian Civil and Administrative Tribunal [2005] VCAT 1988 (Australia)

Local residents challenged a permit application for alterations and additions to an existing chemical storage facility expressing concerns about greenhouse gas emissions among other issues, such as net community benefits, chronic health impacts, and design and monitoring. Finding the concerns unwarranted, the Australian state court denied the challenge. With respect to greenhouse gas emissions, the court found that there was no indication that the site would not be consistent with best practices.

Click here for the Decision
David Kettle Consulting v Gosford City Council

New South Wales Land and Environment Court [2008] NSWLEC 1385 (Australia)

Coca-Cola Amatil (Aust) appealed the conditions placed on a permit for water extraction at a water bottling plant, which restricted the rate of extraction and total extraction levels. The court granted the permit without the conditions through 2011. Taking into account the impacts of climate change on rainfall, the court suggested that the extraction rates and levels should be reevaluated in 2011 using more timely data.

Click here for the Decision
Grainger Plc & Others v. Mr T Nicholson

Employment Appeal Tribunal [2010] ICR 360 (United Kingdom)

Respondent company appealed the Employment Tribunal’s finding that the belief in climate change was a protected belief under the Employment Equality (Religion or Belief) Regulations 2003. Mr. Nicholson filed an employment discrimination claim alleging that his employer terminated him due to his belief in catastrophic climate change. He argued that his belief in climate change was covered under the regulation because his belief affected most aspects of his life, including how he traveled, what he bought and ate, and how he disposed of his waste. The Employment Appeal Tribunal dismissed the appeal reasoning that a belief is not excluded from coverage just because it is political or based on science rather than religion.
Ground Crew at Turramurra v Ku-ring-gai Council

New South Wales Land and Environment Court  [2008] NSWLEC 86 (Australia)

Applicant appealed the denial of a permit for a residential development due to risk of fire. In denying the permit, the local council cited climate change as one of the five issues contributing to the risk of fire. In dismissing the appeal, the court reported that it did not weigh increased risks of fire due to climate change heavily.

Click here for the Decision
RES Southern Cross v Minister for Planning

New South Wales Land and Environment Court [2008] NSWLEC 1333 (Australia)

A number of individuals and a community association objected to RES Southern Cross’s application to modify a proposed wind farm by raising turbines and installing aviation safety lighting. The challengers expressed concern over noise, visual impacts, biodiversity impacts, etc. In dismissing the challenge, the court asserted that the development was in the public interest due to the risks of climate change.

Click here for the Decision
S J Connelly v. Byron Shire Council

New South Wales Land and Environment Court [2009] NSWLEC 1068 (Australia)
New South Wales Land and Environment Court [2009] NSWLEC 1242 (Australia)

The applicant challenged the denial of a permit for the construction of a residential development due to flood risks. In refusing the permit, the local council cited climate change considerations as one of the issues contributing to the risk of flooding. Due to the uncertainty of climate change impacts, the court found it appropriate to take a “cautious approach.” Finding the site unsuitable for the proposed development, the court dismissed the appeal.

Subsequent to the dismissal, the applicant revised its plans to address flood risk and improve maintenance of existing vegetation. The court found the revised proposal had adequately address these concerns and upheld the appeal.

Click here for the first Decision
Click here for the second Decision
Goldfinch (Projects) Limited v. National Assembly for Wales

Queen’s Bench Division, Administrative Court [2002] EWHC 1275 (United Kingdom)

Claimant appealed the denial of planning permit for a residential development where a similar proposed development was approved for the same property by the previous landowner. The inspector had denied the permit on the basis that: (1) the proposal did not conform with sustainable development objectives contained in new national guidance and local policies; and (2) the proposal did not sufficiently take into account increased flood risks due to climate change. The court found for the Claimant, reasoning that the inspector had given too much weight to these issues and too little weight to the previous inspector’s rational for approving the permit.

Click here for the Decision
R. on the application of Corbett v. Cornwall Council

Queen's Bench Division, Administrative Court [2013] EWHC 3958 (United Kingdom)

Local council granted approval for the construction of a wind farm despite visual landscape impacts because of the need for renewable energy sources to reduce greenhouse gas emissions. Local residents and others challenged the permit alleging that revocation of a policy document required the local council to reconsider its approval. The court dismissed the appeal finding that the planning policy changes did not warrant reconsideration of the proposal and that all procedural requirements were fulfilled.

Click here for the Decision

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Chelveston Renewable Energy Ltd v Bedford BC


Local residents challenged two proposals for the construction of wind turbines, arguing that the harms outweighed the economic or environmental benefits. The Planning Inspector found that the proposals would provide significant benefits including renewable energy, reduced greenhouse gas emissions, and the potential to generate economic growth and create jobs. The Inspector found that these benefits clearly outweighed the limited harm to the landscape and heritage assets. To mitigate some of the visual impact and ensure adequate air safety, surface water drainage, etc., the Inspector attached certain conditions to construction.

Click here for the Decision
Hertfordshire County Council v. Secretary of State for Communities and Local Government

High Court of Justice Queen's Bench Division [2011] EWHC 1572 (Admin) (United Kingdom)

Secretary of State for Communities and Local Government ("Secretary") granted planning permission for urban expansion. The development site was partially within the area of two other councils who objected to the permission. Among other concerns, the councils alleged that the Secretary failed to consider the interim policy “Carbon Dioxide and Energy Performance” (ENG1), which requires new development of a certain size to “secure at least 10% of their energy from decentralised and renewable or low-carbon sources” where feasible. The court agreed with the petitioners and quashed the Secretary's decision.

Click here for the Decision
E.ON UK Development Ltd v King's Lynn and West Norfolk Council

Planning Inspector [2012] P.A.D. 29 (United Kingdom)

The Planning Inspector reviewed approvals for the construction of two wind farms. Local residents argued that harms outweighed the economic or environmental benefits. The Planning Inspector found that the wind farms would have adverse effects on the landscape character, cause visual harm, have a minor impact on heritage, and result in minor displacement of species. However, the Inspector found that the economic benefits of enhanced energy security and environmental benefits of reduced carbon emissions, mitigation of climate change, and contribution to national renewable energy targets clearly outweigh the individual and cumulative identified harm.
Macarthur v. Secretary of State for Communities and Local Government

High Court of Justice Queen's Bench Division [2013] EWHC 3 (Admin) (United Kingdom)

Petitioners challenged the local council’s denial of planning applications for the construction of two wind farms on the grounds that the harm from visual and character impacts outweighed the proposals’ modest contribution to climate change mitigation. The Inspector heard the appeals jointly and overturned the council’s decisions. Taking into account recently adopted policy schemes that encouraged renewable energy, especially to address climate change, the Inspector found that the benefits substantially outweighed visual, character, and sound impacts.

Informal citizen groups challenged the Inspector’s decisions in the High Court of Justice alleging that the decisions were based on material error of fact and the Inspector’s reasoning was inadequate. The court rejected both arguments and upheld the Inspector’s approval of the wind farm.

Click here for the Decision
Newark & Sherwood District Council v. The Secretary of State for Communities and Local Government

Queen’s Bench Division, Administrative Court [2013] EWHC 2162 (United Kingdom)

Residents challenged an Inspector decision granting planning permissions for the installation of a wind turbine. The Inspector had found that the benefits of renewable energy production and benefits to the rural economy outweighed the harm of “inappropriate development.” The court upheld the Inspector’s decision, finding that the Inspector’s reasoning was acceptable despite the limited energy generation capacity of the turbine.

Click here for the Decision
Castletown Estates Ltd, Carmarthenshire County Council v. Welsh Ministers

High Court of Justice Queen's Bench Division [2013] EWHC 3293 (Admin) (United Kingdom)

Claimants challenged the decision by the Welsh Ministers to refuse to grant a planning permit for a mixed-use redevelopment, alleging that the Ministers used inaccurate flood and development advice maps to assess the risk of flooding. At issue was the precautionary approach employed by the Minister to take into account climate change to assess future flood risks. The court found that the Minister’s determination that there were impermissible flood risks at the site was fair and reasonable. The application for appeal was dismissed.

Click here for the Decision
Ioane Teitiota v The Chief Executive of the Ministry of Business, Innovation and Employment

New Zealand High Court [2013] NZHC 3125
Court of Appeals of New Zealand [2014] NZCA 173
New Zealand Supreme Court [2015] NZSC 107

A Kiribati citizen appealed the denial of refugee status in the New Zealand High Court. The appellant argued that the effects of climate change on Kirabati, namely rising ocean levels and environmental degradation, are forcing citizens off the island. The High Court found that the impacts of climate change on Kirabati did not qualify the appellant for refugee status because the applicant was not subjected to persecution required for the 1951 United Nations Convention relating to the Status of Refugees. In addition to finding a lack of serious harm or serious violation of human rights were the appellant to return to Kirabati, the court also expressed concern about expanding the scope of the Refugee Convention and opening the door to millions of people who face hardship due to climate change.

The applicant appealed the decision to the Court of Appeals. In dismissing the application, the Court of Appeals noted the gravity of climate change but stated that the Refugee Convention did not appropriately address the issue. The applicant again appealed, this time before the Supreme Court of New Zealand. The Supreme Court affirmed the lower courts’ conclusions, finding that the applicant did not qualify as a refugee under international human rights law. The Court noted, however, that its decision does not rule out the possibility “that environmental degradation resulting from climate change or other natural disasters could [] create a pathway into the Refugee Convention or protected person jurisdiction.”

Click here for the High Court Decision
Click here for the Court of Appeals Decision
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Azienda Agro-Zootecnica Franchini sarl v Regione Puglia

European Court of Justice [2011] Case C-2/10

Applicants sought reference for a preliminary ruling as to whether Italy’s national legislation prohibiting the construction of wind turbines in a national park is consistent with EU’s energy policy, which promotes renewable energy to combat climate change and comply with the Kyoto Protocol. The court found no evidence that the prohibition hindered renewable energy production at the national or regional level and thus determined that the prohibition was consistent with EU energy policy goals.

Click here for the Decision
Ville de Lyon v Caisse des dépôts et consignations

European Court of Justice [2009] Case C-524/09

This reference for a preliminary ruling arose when the City of Lyon requested the administrator of the French national registry of greenhouse gas emission allowances to provide information on the sales of emissions allowances by the operators of the urban heating sites in 2005. The administrator refused to provide the information. The court found that while information on emissions allowance transactions is “environmental information” within the meaning of the Environmental Information Directive, the data could not be released because it had not reached the expiry of the five-year period and there were no overriding public interest served by the disclosure of such information which would outweigh the confidentiality of the information.

Click here for the Decision
Bard Campaign v. Secretary of State for Communities and Local Government

High Court of Justice Queen's Bench Division [2009] EWHC 308 (Admin) (United Kingdom)

Claimants opposed the designation of two locations as proposed “ecotowns.” These designations were part of a larger government campaign to establish a number of ecotowns as exemplar green developments to serve as models of best practices in urban sustainability and climate change resilience. Claimants challenged the designations asserting that the designation process lacked sufficient public consultation, including a failure on the part of the government to provide adequate information and time for public involvement. The court found that the government’s approach to consultation was sufficient and dismissed the claim.

Click here for the Decision
Jarrett v. Secretary of State for Communities and Local Government

High Court of Justice Queen's Bench Division [2012] EWHC 3642 (Admin) (United Kingdom)

Community members challenged an Inspector’s decision to overturn the refusal of an application to erect a wind turbine. The applicants alleged that the Inspector had violated the Local Development Plan by allowing the project despite “significant adverse impact on recognized environmental assets.” The Inspector had found that while the proposed turbine would have a harmful effect on the character and quality of the landscape, it was not so significant as to outweigh the benefits of renewable energy and mitigation of climate change. The court found that the harm to the character and quality of the landscape and the outlook of neighboring properties constituted a significant environmental impact. Thus, the Inspector had erred by failing to identify that the development was not in compliance with the Local Development Plan. On this basis, the court upheld the appeal and quashed the Inspector’s decision.

Click here for the Decision
R. on the application of Tate & Lyle Industries v. Secretary of State for Energy and Climate Change

High Court of Justice Queen's Bench Division [2010] EWHC 2752 (Admin) (United Kingdom)  
Court of Appeal [2011] EWCA Civ 664

Tate & Lyle requested judicial review of their allocation of 1.0 Renewables Obligations Certificates (ROC) for the use of co-firing of biomass with combined heat power (CHP) arguing that they should have received 1.5 ROC. Prior to suit, the Secretary of State for Energy and Climate Change had discovered an error in its prediction of costs of co-firing of biomass with CHP, but after assessment, determined that the original allocation was appropriate. Tate & Lyle alleged that the Secretary’s methodology in making this determination was unfair and discriminated against the technology. The High Court of Justice found that the government’s allocation was reasonable.

On appeal, Tate & Lyle alleged that the Secretary should have only updated the cost information when recalculating its allocation. The Court of Appeals found that it was reasonable for the Secretary to incorporate updated data for other aspects of the calculation and dismissed the application.

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Sustainable Shetland v. Scottish Minister

Outer House, Court of Session [2013] CSOH 158 (United Kingdom)

Sustainable Shetland challenged the Scottish Minister’s approval of an application by Viking Energy for the construction and operation of a 457 megawatt Wind Farm on a number of grounds. In granting the application, the Scottish Ministers had determined that the advantages of meeting renewable energy and climate change goals and economic impacts outweighed negative consequences. The court accepted Sustainable Shetland’s argument that the Scottish Ministers had no power under the Energy Power Act 1989 to grant the consent because Viking Energy did not yet hold an electricity generation license. In addition, the court found that the Ministers had failed to take proper account of their obligations under the Wild Birds Directive 2009.

Click here for the Decision
Wigan Metropolitan Borough Council v. Secretary of State for the Environment Transport & Regions

High Court of Justice Queen's Bench Division [2001] EWHC Admin 587 (United Kingdom)

The local planning authority challenged an Inspector’s approval of a permit application for a residential development. Claimant argued that the application should have been denied because the development would have adverse effects in terms of flooding. After negotiations, it was proposed that compensatory flood storage would be provided. The inspector considered flooding in the context of possible effects of climate change and determined that the flood risks could be adequately addressed through the compensatory flood storage. Finding no error in the Inspector’s decision, the court dismissed the application.
Chicago Climate Exchange v. Bourse de Montreal

Trade-marks Opposition Board [2014] CarswellNat 1045 (Canada)

The Chicago Climate Exchange opposed an application for the trademark of the Montreal Green Exchange, a green exchange for carbon trading and other environmental products and instruments. The Chicago Climate Exchange alleged that the name of the exchange was confusing with its registered trademarks, Montreal Climate Exchange and Marche Climatique de Montreal. Due to the similarity in the nature of services and the degree of resemblance between the marks, the court found in favor of the Chicago Climate Exchange and refused the application.

Click here for the Decision
Maniototo Environmental Society Inc. v Central Otago District Council

Environment Court of New Zealand [2009] NZEnvC 293
High Court of New Zealand [2010] DUN CIV 2009 412 000980

Applicants challenged the granting of resource consents to Meridian Energy for the construction of a wind farm using up to 176 wind turbines. The Environment Court of New Zealand conducted a cost-benefit analysis of the proposed wind farm and determined that the project did not comply with the Resource Management Act because the substantial adverse impacts on the natural landscape outweighed the positive factors, principally the large quantity of renewable energy.

Meridian appealed the decision challenging the court’s use of cost-benefit analysis and consideration of alternative sites. The High Court of New Zealand allowed the appeal and remanded the case back to the Environment Court. While the High Court found that the Environment Court was permitted to use cost benefit analysis, it instructed the court to allow Meridian to give further information on alternatives and opportunity to present a market-based analysis of impacts. In addition, the High Court denied a cross-appeal alleging the court had erred in considering climate change impacts without first determining the extent to which climate change is caused by human activity.

Before the Environment Court revisited the issue, Meridian announced that it had withdrawn its applications for resource consent.

Click here for the Environment Court Decision
Click here for the High Court Decision

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Unison Networks Ltd. v Hastings District Council

High Court of New Zealand [2007] NZHC 1435

Citizen groups challenged the granting of resource consents to Unison Networks Limited to construct and operate a wind farm. The New Zealand Environment Court allowed the appeal. The court determined that despite the benefits of the wind farm in terms of climate change and providing a source of renewable energy, the proposal did not comply with the Resource Management Act because the proposed project would have significant adverse effects on an outstanding natural landscape. Unison Networks appealed the court’s decision in the High Court of New Zealand. The High Court found no error as a matter of law and dismissed the appeal.
Outstanding Landscape Protection Society Inc. v Hastings District Council

Environment Court of New Zealand [2007] NZEnvC 87

The Environment Court of New Zealand upheld an appeal by citizen groups challenging the approval of resource consents for Unison Networks Limited to construct and operate a wind farm. The court reasoned that the adverse landscape impacts and associated cultural values outweighed the advantages derived from the generation of renewable electricity and reduced greenhouse gas emissions.
Motorimu Wind Farm Ltd. v Palmerston North Council

Environment Court of New Zealand [2009] NZEnvC 33

Motorimu Wind Farm appealed a city council’s partial denial of resource consents for a proposed wind farm. The council only approved only 75 of the 127 proposed turbines due to significant adverse landscape impacts. The Environment Court of New Zealand acknowledged that the additional turbines would markedly increase the wind farm’s contribution to New Zealand’s renewable energy needs but ultimately agreed with the city council and declined the appeal for all but 4 turbines.

Click here for the Decision
Opinion of Advocate General Sharpston

European Court of Justice, [2014] Case C-426/12; Celex 612CC0426

Advocate General Sharpston was asked for guidance as to the meaning of the term ‘dual use’ in the second indent of Article 2(4)(b) in relation to sugar production and lime fertilizer, the by-product arising from that process, of the Directive 2003/96/EC, which introduced a regime imposing minimum harmonized levels of taxation on all energy products and electricity. The referring court also asked whether national legislators are constrained by an EU concept of what constitutes dual use if they choose to introduce domestic measures in order to tax such energy products.

The Advocate General answered that ‘dual use’ within the meaning of Article 2(4)(b) refers to where coal is used as heating fuel in a lime-kiln in order to generate carbon dioxide for the production of lime-kiln gas, which is subsequently used for the purification of the raw juice obtained from sugar beets, that process giving rise to the by-product earth foam. The Advocate General found that Member States may apply a more restrictive definition of dual use and choose to tax dual use energy products, provided they exercise their competence consistently with EU law. If a Member State chooses to apply such a narrower definition, a taxpayer cannot invoke a broader EU concept of dual use in order to obtain exoneration from a charge to tax imposed under national law.

Click here for the Decision
Regina v. Dosanjh (Sandeep)

Court of Appeal, United Kingdom [2013] EWCA 2366 (Crim)

The defendants were involved in manipulation of the EU Emissions Trade Scheme, running companies that formed two artificial ‘trading chains’ through which the fraud was operated. They were convicted of the common law offense of conspiring to cheat the public revenue and sentenced to terms of imprisonment of 15 years, 11 years and 9 years, respectively. The defendants appealed the sentences, arguing that (1) it was wrong in principle to pass a sentence which was longer than the maximum penalty available for the equivalent statutory offences or for the cognate common law offence of conspiracy to defraud; and (2) the sentence of 15 years was, on the facts of the case, manifestly excessive.

The court stated that Parliament had deliberately not decided the offense of cheating the revenue. Parliament had left the offense of conspiracy to cheat the public revenue from statutory charge, both in existence and the penalty at large, because it is of particular seriousness. In assessing whether or not the sentences were manifestly excessive, the court looked at previous decisions of the court and the draft guideline from the Sentencing Council, and noted that: cheating the revenue is a major drain on the public purse, and the defendants’ actions were a serious level of offending, with an enormous amount of planning. However, the court determined that those sentences were too high and reduced the sentences to 13 years, 10 years and 8 years.

Click here for the Decision
Lark Energy Ltd v. Secretary for State for Communities

High Court of Justice Queen Bench Division [2014] EWHC 2006 (Admin) (United Kingdom)

Lark Energy Limited challenged the decision of the Secretary for State Communities (Secretary) to dismiss its appeal against the refusal of the District Council of its application for planning permission for the installation of a 24 MW solar farm. Lark Energy had been granted a permit for a 14 MW solar array but then appealed to increase the installation. The inspector found that the appeal scheme should be approved because the significant benefits, including increased renewable energy and decreased greenhouse gas emissions, outweighed the limited harm to the character and appearance of the countryside. However, the Secretary disagreed, finding that the harm to the character and appearance of the area caused by the appeal scheme was greater than the permitted scheme such that it outweighed the benefits. Lark Energy appealed the Secretary’s findings in the High Court of Justice alleging that the Secretary had failed to sufficiently consider local and national development policies. The court found that the Secretary had failed to fulfill his duty to consider whether the appeal scheme was in accordance with local council’s development plan. The court quashed the Secretary’s decision and remitted the case to him for redetermination.

Click here for the Decision
Ålands Vindkraft AB v. Energimyndigheten

European Court of Justice, Grand Chamber [2014] Case C-573/12 (European Union)

A Finnish wind farm challenged defendant Swedish energy agency’s refusal to grant a green electricity certificate. The agency refused on the grounds that only green electricity production installations located within the Swedish territory may be awarded the certificate. Plaintiff claimed that the territorial limitation of Sweden’s energy certificate scheme under Directive 2009/28 was inconsistent with Article 34 of the Treaty on the Functioning of the European Union (TFEU). The court upheld Sweden’s national support scheme and found that it was compatible with TFEU Article 34 because the national quota promotes increased use of renewable energy sources in electricity production.

Click here for Decision
Essent Belgium NV v. Vlaamse Reguleringsinstantie voor de Elektriciteits- en Gasmarkt

European Court of Justice, Fourth Chamber [2014] Cases C-204/12 to C-208/12 (European Union)

A Belgian electricity supplier (Essent) challenged the decision of the defendant regulatory authority (VREG) to impose fines on Essent for failing to meet its quota obligation for the use of renewable energy. Pursuant to Belgium’s national support scheme, VREG refused to accept Essent’s submission of “guarantees of origin” attesting to the production of green electricity outside of the Flemish region. Essent argued, inter alia, that VREG’s decision was inconsistent with the Treaty on the Functioning of the European Union (TFEU) and the Agreement on the European Economic Area (EEA). The court held that European Union law does not require a national support scheme promoting the use of renewable energy to extend to green electricity produced in other European Union nations. In reaching its decision, the court reasoned that the law at issue was justified on public interest grounds, since it contributed to the European Union’s pledge to combat climate change by reducing emissions of greenhouse gases.

Click here for Decision
In re: AD (Tuvalu)

New Zealand Immigration and Protection Tribunal [2014] Cases 501370-371 (New Zealand)

A family from Tuvalu appealed after they were denied New Zealand resident visas. The family argued, *inter alia*, that they would be at risk of suffering the adverse impacts of climate change if they were deported to Tuvalu. Pursuant to the Immigration Act 2009, the New Zealand Immigration and Protection Tribunal found that the family had established “exceptional circumstances of a humanitarian nature, which would make it unjust or unduly harsh for the appellants to be removed from New Zealand.” However, while the Tribunal acknowledged that climate change impacts may affect enjoyment of human rights, it explicitly declined to reach the question of whether climate change provided a basis for granting resident visas in this case. Instead, the Tribunal based its finding of “exceptional circumstances” on other factors, including the presence of the husband’s extended family in New Zealand, the family’s integration into the New Zealand community, and the best interests of the children.

Click here for Decision
Solar Century Holdings Ltd v. Secretary of State for Energy and Climate Change

High Court of Justice Queen’s Bench Division Administrative Court [2014] EWCA 3677 (United Kingdom)

Four solar energy companies challenged a decision of the Secretary of State for Energy and Climate Change (the “Secretary”) to discontinue a renewable energy support scheme. The support scheme provided financial incentives for the creation of generation capacity from renewable sources, in line with the United Kingdom’s goal to combat climate change by decreasing greenhouse gas emissions and increasing energy consumption from renewable sources. Although the government had represented that the scheme would run until 2017, the Secretary announced that it would end two years early due to unexpectedly high costs. The solar energy companies argued, *inter alia*, that the Secretary’s decision was beyond his statutory authority and that government statements indicating the program would run until 2017 were binding. The court found that the Secretary acted within his authority, citing both the need to balance public policy objectives in the field of energy and climate change and law requiring the Secretary to exercise budgetary discipline.
Bellis v. Merthyr Tydfil CBC

Planning Inspectorate [2014] P.A.D. 50 (United Kingdom)

A local planning authority in Wales denied an application to construct 3 wind turbine generators in a Historic Landscape Area, and the applicant appealed. The administrative court found that the proposed wind turbines would have a significantly detrimental effect on the historic landscape and would detract from the enjoyment of visitors to the area. The court also found, however, that the local community was involved in the development of the wind project and that the turbines would make an important contribution towards the United Kingdom’s efforts to combat climate change. After weighing these considerations and concluding that the emissions reductions benefits were outweighed by “the significant harm that would be caused to the historic landscape and visual amenity of the common,” the administrative court dismissed the appeal.
Pugh v. Secretary of State for Communities and Local Government

High Court of Justice Queen's Bench Division Planning Court [2015] EWHC 3 (United Kingdom)

A local planning authority in England denied an application to construct one wind turbine generator that would negatively affect nearby heritage assets. The applicant appealed, and the Planning Inspector reversed the local authority’s decision on the basis that “the benefits of the scheme, including the public benefits to be derived from tackling climate change out weigh the limited harm to the character and appearance of the area.” The claimant appealed to the High Court of Justice Planning Court, which affirmed the judgment of the Planning Inspector, finding that the Inspector had adequately explained his reasoning and that he was entitled to place “considerable value” on the climate change benefits of the scheme.

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Bundesrepublik Deutschland v. Nordzucker AG

European Court of Justice [2015] C-148/14 (European Union)

Nordzucker AG ("Nordzucker"), a sugar refinery operator in Germany, produced an emissions report for 2005 pursuant to Directive 2003/87/EC, part of the European Union’s greenhouse gas emissions trading scheme. Nordzucker’s emissions report excluded emissions resulting from steam generation necessary to operate the refinery’s drying facility on the basis of a letter from a German Ministry stating that such facilities were exempted from compulsory emissions trading schemes. An expert verified the report, and Nordzucker surrendered emissions allowances equal to the emissions stated in the report. Subsequently, the German Emissions Trading Authority examined Nordzucker’s emissions report and found that it should have included emissions attributable to the refinery’s drying facility. Nordzucker revised its emissions report and surrendered additional allowances. German authorities found Nordzucker liable for failing to timely surrender emissions allowances and levied a penalty as provided in Article 16(3) of Directive 2003/87. After a series of appeals, the German Federal Administrative Court referred to the European Court of Justice the question whether excess emissions penalties apply where an operator surrenders allowances equal to emissions stated in a verified report, but where the report is later found to understate the operator’s emissions and additional allowances are surrendered. The European Court of Justice found that such penalties should not apply and that, in such cases, national authorities should establish proportionate penalties taking into account relevant factual circumstances.

Click here for **Opinion of the Advocate General**

Click here for **Decision**
North Cote Farms Ltd v. Secretary of State for Communities and Local Government

High Court of Justice Queen's Bench Division Planning Court [2015] EWHC 292 (United Kingdom)

A local planning inspector in England denied an application to construct a wind turbine generator that would negatively affect Carnaby Temple, a nearby heritage asset. The applicant appealed, complaining in particular that the planning inspector improperly considered the effect the wind turbine would have on the view from the Temple, despite the fact that the windows of the temple were bricked up. The high Court of Justice affirmed the local authority’s decision on the basis that the Inspector was entitled to take into account the views from the Temple and to find that this and other negative impacts outweighed the wind turbine’s potential contribution to the government’s goal of reducing greenhouse gas emissions and addressing climate change.

Click here for Decision
ŠKO-ENERGO, s.r.o. v. Odvolací finanční ředitelství

European Court of Justice Second Chamber [2015] C-43/14 (European Union)

ŠKO-ENERGO, s.r.o. acquired free greenhouse gas (“GHG”) emission allowances pursuant to Article 10 of Directive 2003/87 (“Article 10”), which provided that EU Member states must allocate at least 90% of allowances free of charge from 2008 through 2012. The Czech Republic Tax Office levied a 32% gift tax on the allowances pursuant to Czech Law No. 357/1992, which had been amended in 2010 to impose gift taxes on free GHG emissions allowances. A court of appeal in the Czech Republic requested a preliminary ruling from the European Court of Justice on the question of whether Article 10 precludes application of the Czech gift tax to emissions allowances obtained free of charge. The Court concluded that the gift tax was inconsistent with Article 10, because it undermined the directive’s objective to temporarily reduce the economic impact of the EU GHG emission allowances market. The Court directed to the referring court the question of whether the gift tax “respect[s] the 10% ceiling on the allocation of emissions allowances.”

Click here for Decision
European Commission v. Council of the European Union

European Court of Justice [2015] C-425/13 (European Union)

Australia approached the European Commission (the “Commission”) to negotiate linking the EU’s greenhouse gas emissions trading scheme with Australia’s emissions trading system. A formal recommendation authorizing the opening of negotiations with Australia was adopted by the Commission and forwarded to the Council for the EU (the “Council”). After Member States requested greater involvement in the negotiations with Australia, the Council approved negotiating directives which 1) required the Commission to “report in writing to the Council on the outcome of the negotiations after each negotiating session and, in any event, at least quarterly” and 2) laid out specific procedures for the negotiations, including allowing the Council or a special committee to establish detailed negotiating positions for the EU. The Commission brought an action to annul these sections of the negotiating directives on the basis that they exceeded the Council’s authority and encroached on the Commission’s power. The Advocate General issued an opinion finding that the Council is entitled to ask for regular reports on the negotiations process, but it may not unilaterally impose detailed procedures for the conduct of international negotiations. The Advocate General recommended that the Court annul the section of the negotiating directives requiring specific negotiating procedures.

Click here for Decision
Green Network SpA v. Autorità per l’energia elettrica e il gas (Gestore dei Servizi Energetici SpA – GSE, intervening)

European Court of Justice (Fourth Chamber) [2014] C-66/13 (European Union)

An Italian company, Green Network SpA (“Green Network”), imported renewable energy from a Swiss supplier in 2005. Under Italian law, energy companies were required to purchase a certain number of green certificates each year, but could seek an exemption where they imported renewable energy from countries with analogous laws promoting renewable energy. Where the exporting country was not a member of the European Union, the exemption was available only if there was a prior agreement between the importing and exporting countries regarding recognition of guarantees of origin. When Green Network requested an exemption from its obligation to purchase green certificates, the Italian national grid manager rejected that request since there was no agreement regarding guarantees of origin between Italy and Switzerland at the time the renewable energy was imported. Green Network brought an action in administrative court, which was dismissed. Green Network appealed the dismissal, and the appeals court referred to the European Court of Justice the question, *inter alia*, whether the Italian law conflicted with EU directives. The Court held that the Italian law was precluded since guarantees of origin fall within an area largely covered by EU law.

Click here for Decision
R. (on the application of Swiss International Airlines AG) v. Secretary of State for Climate Change and Energy

Court of Appeal (Civil Division) [2015] EWCA Civ 331 (United Kingdom)

The European Union temporarily suspended the greenhouse gas emissions allowance trading scheme for flights coming in and out of the EU, for the purpose of encouraging an agreement among members of the International Civil Aviation Organization to regulate aviation emissions. Flights between EU countries and Switzerland, however, were excluded from the suspension. Swiss International Airlines AG (Swissair) sued, claiming that the EU decision was invalid because it breached the principle of equal treatment. A lower court found that the principle of equal treatment did not apply to differential treatment by the EU towards non-EU member states such as Switzerland, and that, even if the principle did apply, it had not been breached in this case. On appeal, the court found that sufficient doubt existed as to the scope of the equal treatment principle and its application in this case to justify a referral to the European Union Court of Justice, the only court with jurisdiction to declare an EU law invalid.
CF Partners (UK) LLP v. Barclays Bank PLC

High Court of Justice Chancery Division [2014] EWHC 3049 (United Kingdom)

CF Partners (UK) LLP (“CFP”) approached Barclays Bank PLC (“Barclays”) seeking financing and advice to enable CFP to acquire Tricorona AB (“Tricorona”), a company operating in the carbon credits market and holding a large portfolio of Certified Emissions Reductions (“CERs”). Subsequently, Barclays and Tricorona used information gained from their relationship with CFP to arrange for Barclays to acquire Tricorona. CFP brought suit against Barclays and Tricorona, seeking compensation for the defendants’ purported misuse of confidential information and breach of an exclusivity agreement. Based on evidence presented at trial, the court found that neither Barclays nor Tricorona owed an obligation of exclusivity to CFP at the relevant times. The court found, however, that CFP provided confidential information to Barclays and Tricorona regarding the value of Tricorona’s portfolio of CERs and that the defendants wrongfully used this information to their own advantage by arranging for Barclays to purchase Tricorona. The court held Barclays and Tricorona jointly liable for each other’s breaches of confidentiality and entered a judgment of ten million pounds in compensatory damages.

Shortly after the opinion was issued, the parties reached a undisclosed settlement covering all outstanding matters including costs and appeals. Click here for an article regarding the settlement.

Click here for Decision
Urgenda Foundation v. Kingdom of the Netherlands

District Court of the Hague [2015] HAZA C/09/00456689 (The Netherlands)

A Dutch environmental group, the Urgenda Foundation, and 900 Dutch citizens sued the Dutch government to require it to do more to prevent global climate change. The court in the Hague ordered the Dutch state to limit GHG emissions to 25% below 1990 levels by 2020, finding the government’s existing pledge to reduce emissions 17% insufficient to meet the state’s fair contribution toward the UN goal of keeping global temperature increases within two degrees Celsius of pre-industrial conditions. The court concluded that the state has a duty to take climate change mitigation measures due to the “severity of the consequences of climate change and the great risk of climate change occurring.” In reaching this conclusion, the court cited (without directly applying) Article 21 of the Dutch Constitution; EU emissions reduction targets; principles under the European Convention on Human Rights; the “no harm” principle of international law; the doctrine of hazardous negligence; the principle of fairness, the precautionary principle, and the sustainability principle embodied in the UN Framework Convention on Climate Change; and the principle of a high protection level, the precautionary principle, and the prevention principle embodied in the European climate policy. The court did not specify how the government should meet the reduction mandate, but offered several suggestions, including emissions trading or tax measures. This is the first decision by any court in the world ordering states to limit greenhouse gas emissions for reasons other than statutory mandates.

Click here for Summons
Click here for Statement of Reply
Click here for Decision
VZW Klimaatzaak v. Kingdom of Belgium, et al.

Court of First Instance, Brussels [2015] (Belgium)

Klimaatzaak, an organization of concerned citizens, sued the federal and regional governments of Belgium in April 2015 for contributing to global climate change by failing to reduce greenhouse gas emissions. Klimaatzaak seeks to force the Belgian government to reduce greenhouse gas emissions 40% below 1990 levels by 2020 and 87.5% below 1990 levels by 2050. The Plaintiffs allege, inter alia, that failure to reduce emissions constitutes a violation of human rights laws. The parties are currently in the process of submitting written statements to the court. After the written submissions are made, the court will hold a hearing, and a decision will be issued 1-3 months later.

Click here for Summons [Dutch]
Trump International Golf Club Scotland Limited and The Trump Organization LLC v. The Scottish Ministers

First Division, Inner House, Court Of Session [2015] CSIH 46 (United Kingdom)

The Aberdeen Offshore Wind Farm Limited (“AOWFL”) applied for permission to build and operate an 11 turbine wind farm off the coast of Aberdeenshire in Scotland. The Minister for Energy, Enterprise and Tourism granted consent to build the wind farm without holding a public inquiry. Trump International Golf Club Scotland Limited and the Trump Organization LLC (collectively, “Trump”), which is developing a golf course and resort 3.5 kilometers from the wind farm, challenged the approval on the grounds that: 1) AOWFL did not hold a license to generate electricity; 2) the Minister was biased in favor of AOWFL; and 3) the consent lacked an enforcement mechanism to ensure that AOWFL complied with design conditions. A lower court denied Trump’s petition, and Trump appealed. The appeals court rejected all of Trump’s arguments, finding that a license was not required at the time of consent, there was no evidence of improper bias on the part of the Minister, and enforceable conditions attached to the Minister’s consent.

Click here for Decision
Ashgar Leghari v. Federation of Pakistan

(2015) W.P. No. 25501/2015 (Lahore High Court Green Bench)

An appellate court in Pakistan granted the claims of Ashgar Leghari, a Pakistani farmer, who had sued the national government for failure to carry out the 2012 National Climate Policy and Framework. On September 4, 2015 the court, citing domestic and international legal principles, determined that "the delay and lethargy of the State in implementing the Framework offend the fundamental rights of the citizens." As a remedy, the court 1) directed several government ministries to each nominate "a climate change focal person" to help ensure the implementation of the Framework, and to present a list of action points by December 31, 2015; and 2) created a Climate Change Commission with representatives of key ministries, NGOs, and technical experts. On September 14 the court issued a supplemental decision naming 21 individuals to the Commission and vesting it with various powers.

Additional Information:

Sept. 4 decision
Sept. 14 supplemental decision
In re Greenpeace Southeast Asia et al.

Commission on Human Rights of the Philippines

Greenpeace Southeast Asia and numerous other organizations and individuals filed a petition asking the Commission to investigate a general issue—“the human rights implications of climate change and ocean acidification and the resulting rights violations in the Philippines”—and a more specific one—“whether the investor-owned Carbon Majors have breached their responsibilities to respect the rights of the Filipino people.” The core factual allegation of the petition draws on research identifying particular entities’ quantum of responsibility for anthropogenic greenhouse gas emissions since 1751. The petition names 50 of those entities, all publicly traded corporations, as respondents. It identifies multiple sources of human rights, but draws most heavily on the UN Human Rights Commission’s Guiding Principles on Business and Human Rights.
KS SPV35 Ltd v. Monmouthshire County Council

UK Planning Inspectorate [2015] P.A.D. 52

KS SPV35 Ltd. appealed the Monmouthshire County Council’s rejection of its application to install a solar farm near an Area of Outstanding Natural Beauty (“AONB”). The Planning Inspector overturned the Council’s decision after considering arguments that the slightly revised plan for a solar farm would result in a loss of natural green space or harm to the area’s natural character and wildlife. The Inspector conditioned approval of the plan for a solar farm on construction and maintenance of a surrounding boundary hedge of at least three meters in height.
An Taisce v. An Bord Pleanála

High Court of Ireland [2015] IEHC 633

An Taisce and Friends of the Irish Environment, Ltd., challenged An Bord Pleanála’s approval of Edenderry Power Ltd.’s application to extend operation of its peat- and biomass-burning power plant from 2015 to 2023. Bord Na Móna Allen Peat Limited and others engaged in peat extraction and transport were also parties to the case. At issue was whether the approval granted to Edenderry had complied with the EU’s Environmental Impact Assessment Directive, which was incorporated into Irish law in 2010. An Taisce argued that the approval had not because it had considered only the impacts of the plant’s operations but not those resulting from the peat extraction and transport involved in supplying the bulk of the plant’s feedstock. Edenderry and the other respondents countered that because neither the peat nor plant operations were contingent upon one another they were unrelated for the purposes of environmental review. The High Court, noting that it was required to base its decision on the “actual reality of the project” at issue, rejected Edenderry’s arguments as theoretical—the permit application, after all, contemplated sourcing from these particular bogs, such that any other approach would constitute a material change to the application. Thus, “[t]here is functional interdependence as the power plant relies for the vast majority of its raw material on the designated bogs.” The court also noted that it made no difference that the bogs were independently subject to an air pollution licensing regime. The planning authority, it explained, “is entitled to take the licenses into account” when assessing the impacts of the peat extraction operations.

Click here for 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.