



October 14, 2020

VIA HAND DELIVERY AND EMAIL

Mr. Richard P. Ieyoub
Commissioner of Conservation
Louisiana Department of Natural Resources
617 North 3rd Street, 9th Floor
Baton Rouge, LA 70802

Re: *Louisiana Wetlands, LLC, et al. v. Energen Resources Corporation, et al.*
16th Judicial District Court, Parish of St. Mary, No. 130-527, Div. "B"
DNR OC Legacy File No. 016-054-003

Dear Commissioner Ieyoub:

On behalf of the plaintiffs in the above-captioned case and pursuant to Section 613 of LAC 43:XIX.Chapter 6, we respectfully submit these comments to the remediation plan proposed on behalf of Southern Natural Gas Company, LLC ("SNG"). On the whole, SNG's plan violates the most basic tenets of Statewide Order 29-B ("SWO 29-B") as set forth below. As required by Sections 613 and 617, we note that these comments seek only the application of the rules and regulations of the Office of Conservation, and we have copied here all parties to the above-captioned matter.

As you are aware, SNG conducted oil and gas operations on plaintiff's property in the Franklin Field from 1956 to 1973. During those several decades of stewardship over plaintiff's property, SNG contaminated the soil and the shallow groundwater aquifer. There is no dispute on this point; SNG's own experts concede it:

Michael Pisani (10/6/2020)

Q. So within area one and area three. Would you agree that there are constituents of concern that are the result of oilfield operations?

MR. BERTEAU:

Objection to form.

A. Yes. Not necessarily under standards or exceeding environmental standards but there are constituents that were it not from oilfield operations would not be there

....

(pp. 31-32, draft transcript)

Despite the above concessions and despite the fact that SNG's operations have permanently scarred plaintiff's property, SNG has incredibly proposed no remediation whatsoever for the soil and groundwater contamination that blatantly exceed SWO 29-B criteria. Furthermore, whether through exceptions requested in its proposed plan or by its Hypothetical Plan, SNG's submitted plans fail to comply with the specific requirements outlined in SWO 29-B. With contamination

persisting on the site and no compliant plan to address the environmental damages resulting from SNG's operations, the proposed plans submitted by SNG must be denied and additional data required before any plan can be considered by the Department.

I. SNG has failed to comply with the requirements of SWO 29-B to delineate the horizontal and vertical extent of constituents of concern in the soil and groundwater on plaintiff's property.

Pursuant to a LAC 43:XIX.611, proposed plans submitted to the Department for consideration shall fully delineate the vertical and horizontal extent of the environmental damage. SNG, as part of its proposed plan, has failed to comply with these delineation requirements. With respect to soil, vertical delineation has not been achieved. At numerous sample locations, the lowest sample depths exhibit regulatory exceedances. In fact, at many locations, constituent concentrations increase with depth, with regulatory exceedances extending to the deepest interval of the sample.¹

SNG proposes soils should only be delineated to a depth of two feet. However, nothing in SWO 29-B limits the depth to which soil must be delineated. In fact, in DNR's Written Reasons in Support of Most Feasible Plan in connection with the *Agri-South* case², the Department explicitly ruled that SWO 29-B contains no depth limitation for delineations soil contamination.

Generally, information provided to the Agency clearly established that soil in, around and below the former exploration and production pit locations at the Plug Road property exceeds applicable salt parameters for soil to a depth of at least 30 feet below ground surface. The plan strategy submitted to the Agency by the admitting party, Tensas Delta Exploration Company, LLC (Tensas Delta), included soil remediation to meet applicable salt parameters to a depth of approximately 3 feet below ground surface with soil that exceeds the applicable salt parameters below approximately 3 feet to remain as is. Such conditions require compliance with Exceptions provisions of LAC 43:XIX.319 to address compliance with LAC 43:XIX.313 for soil conditions below 3 feet. Therefore, the Tensas Delta plan soil strategy was found not in compliance with the Exceptions provisions of LAC 43:XIX.319. Furthermore, the Tensas Delta plan was not complete and in full compliance with LAC 43:XIX.Subpart I .Chapter 6 as the plan submitted did not include a separate plan as required by LAC 43:XIX.611.F.2 that addresses compliance with LAC 43:XIX.319 and other applicable requirements detailed in LAC 43:XIX.611.

SNG has made no attempt to delineate its E&P waste regardless of depth, and therefore has failed to comply with SWO 29-B requirements.

¹ See for example EN-13, TPH-D

² Written Reasons, *Agri-South, LLC. et. al. v. Exxon Mobil Corp. et al.*, 7th JDC, Catahoula Parish, No. 24,132, Docket No. ENV-L-2013-2, pp. 7-8.

In addition, at some locations within AOI 3, SNG neglected to analyze soils from the 0 to 2 foot sample interval.³ And in some instances at those locations, the sample intervals from 2 to 4 feet and below contained constituents of concern that exceeded regulatory criteria.⁴ Therefore, SNG cannot ascertain whether the soils from 0 to 2 feet at those locations contain E&P waste that fail to meet numeric standards.

Michael Pisani (10/6/2020)

Q. At EN-13, did ERM take any samples at 0 to two feet?

A. Did we take at samples at what?

Q. At 0 -- at the 0 to two foot interval?

A. Doesn't appear to be so.

Q. Why not?

A. Vegetation was so robust and it looked like fill soil, but Mr. Angle can more completely answer that for you since he was in charge of the sample program.

Q. But you would agree we don't know whether there are constituents of concern in the 0 to two foot interval, correct?

MR. BERTEAU:

Objection to form.

THE WITNESS:

Yeah. That's -- I don't know one way or the another based on looking at this table.
(pp. 55:5-24, draft transcript)

As a result, SNG cannot definitively say that the site soils are delineated.

With respect to groundwater delineation, SNG has failed to define the lateral extent of constituents at the designated AOIs. For example, at AOI 3 every groundwater sample contains chloride concentrations that exceed 250 mg/L, not to mention the background chloride concentrations of 25 mg/L. Without any groundwater samples achieving regulatory compliance for chlorides at this location, the environmental damage can in no way be considered delineated. Furthermore, SNG failed to obtain a groundwater sample within an identified pit feature in AOI 1. Without an analytical sample at that location, DNR cannot determine whether groundwater underlying this likely source of contamination is compliant with SWO 29-B criteria, much less delineate any potential environmental damage.

David Angle (10/6/2020)

Q. You you don't have any groundwater data inside the smaller rectangle in area one, correct?

A. There's no groundwater data available for that smaller box, that's correct.

Q. So we don't know what the concentration would be in that smaller rectangular box southwest of the other rectangular?

A. Yeah. It wasn't investigated.

(p. 166, draft transcript)

³ See for example sample locations EN-13, EN-14, SB-12, SB-13 and SB-14

⁴ See for example EN-13 where the following parameters exceed SWO 29-B numerical criteria at depths below 2 feet: Arsenic from 6 to 8 feet; Barium from 2 to 8 feet; TPH-D at 2 to 8 feet; TPH-O at 4 to 6 feet; Aliphatic >C12-16 from 4 to 6 feet.

Also, SNG cannot assure the Department that contamination has not migrated offsite. AOI 3 is located near the boundary line of plaintiff's property; thus, without delineating the extent of groundwater contamination, SNG can only make assumptions about whether the contaminant plume extends beyond the property line.

David Angle (10/6/2020)

Q. Can you say for certain that either the 250-milligram per liter contour or the 25-milligram per liter contour extends off of the property boundary to the east?

A. Well, considering that that concentration is you know not much greater than 250 it's probably reasonable to assume that based on the you know low groundwater flow velocity and what we know right now.

Q. But that is an assumption on your part, correct?

A. That's correct. Backed up by the data that we have. And I'll -- I guess for the exercise this hypothetical exercise we felt that that's -- that was adequate to do what we needed to do.

(pp. 165:12 to 166:2, draft transcript)

SNG has failed to delineate the full extent of the contamination in the areas it proposes to address, and SNG has completely ignored other multiple areas of the plaintiff's property at which soil contamination exceeds 29-B standards.⁵

II. SNG failed to analyze most of the soil and groundwater samples for PAHs and TPH fractions and therefore has not delineated the soil and groundwater at Areas 1 and 3 pursuant to Appendix D and Table D-1 of RECAP .

Pursuant to RECAP, "The indicator constituents and TPH fractions **shall be identified and quantitated at all sites where petroleum hydrocarbons have been released.**"⁶ However, SNG simply failed to analyze the vast majority of samples for these constituents." In fact, of the approximately 23 soil samples analyzed in Area 3, only one was evaluated for PAHs. At location EN-13R, TPH-D was found at 5,030 mg/kg in the soil at 4 to 6 feet. However, no TPH fraction or PAH analyses were performed below 8 feet.

No samples were analyzed for TPH fractions or PAHs in the former pit areas in Area 1.

Accordingly, SNG has failed to delineate these sites under RECAP.

⁵ Soil sample locations not vertically delineated to SWO 29B criteria include the following: EN-13 for Arsenic, Barium, EC, and TPH-D; EN-17 for Arsenic and Barium; Groundwater sample locations not horizontally delineated to SWO 29B criteria include the following: MW-6 for Chlorides; MW-7 for Arsenic and Chlorides; MW-8 for Chlorides; and EN-18 for Arsenic.

⁶ See RECAP, pg. D-TPH-2 (emphasis added)

III. SNG's Hypothetical Plan, while containing a feasible groundwater plan, offers no SWO 29-B compliant plan for soil.

Pursuant to SWO 29-B, if a party submits a plan for which it seeks an exception under the provisions of Section 319 of SWO 29-B, that party is required to submit another plan that complies with all the provisions of SWO 29-B, exclusive of Section 319. In connection with groundwater, SNG's Hypothetical Plan proposes to remediate the chloride concentrations to 25 or 250 mg/L.⁷ As explained by SNG's own experts, this plan is feasible.

Michael Pisani (10/6/2020)

Q. So if you were to implement the 29-B plan that we have marked as Exhibit 7, you would agree that that would comply with the requirements of 29-B?

MR. BERTEAU:

Objection to form.

THE WITNESS:

I think we already comply with requirements of 29-B without this plan but this plan has put forward simply to to give a check box or give a check mark in a box that we evaluated what can be done about constituents in groundwater. Our experience is that won't be required, but to be compliant with the -- what's becoming the practice of these limited admissions and act 312 sites, we have put this in there. Although if you read yourself we don't stand behind it don't recommend it.

BY MR. HUDDLELL:

Q. Okay. And I understand while you don't recommend it it could be implemented correct?

A. It's technically feasible to attempt to implement it.

Q. Okay?

A. We don't have enough data to say that it would actually work, but it's technically possible.

(80:18 to 81:22, draft transcript)

In contrast, SNG failed to submit a 29-B compliant plan for soil. Instead of using 29-B to evaluate environmental damage in the soil on plaintiff's property, SNG uses RECAP to support its proposed plan. The use of RECAP is a recognized exception to SWO 29-B. SNG, as part of its limited admission, submitted to DNR a "Hypothetical Plan". However, its Hypothetical Plan fails to propose any plan for soil that complies with the requirements under SWO 29-B exclusive of Section 319.

David Angle (10/6/2020)

Q. Does your hypothetical plan also incorporate RECAP as as far as the soil evaluation?

A. Our hypothetical plan is a groundwater plan.

Q. Okay.

Q. Do you have a hypothetical plan that does not include RECAP as part of its soil evaluation?

A. No.

⁷ 25 mg/L is background and 250 mg/L is regulatory.

- Q. Okay. So ERM does not have a hypothetical 29-B plan for soil; is that correct?
- A. Well we have a plan for soil and that's in our most feasible plan that's the main plan.
- Q. Okay. And that includes RECAP as an except to 29-B, correct?
- MR. BERTEAU:
Objection to form.
- THE WITNESS:
It includes 29-B and RECAP, correct.
- (pp. 116-17, draft transcript)

As a result, SNG's Hypothetical Plan proposes to leave extensive soil contamination throughout the property in excess of SWO 29-B standards.

IV. SNG violates RECAP's prohibition of injury to private property, and SNG cannot meet the basic requirements outlined in RECAP regarding the use of Management Options.

SNG proposes to use RECAP in its evaluation of the environment damage it caused to the soil and groundwater on plaintiff's property. The Department has previously recognized "that even the consideration of the use of RECAP by Conservation remains an exception to the applicable Conservations regulations."⁸ However, just like SWO 29-B, RECAP contains certain restrictions and requirements that any submitter must meet.

First and foremost, RECAP "does not authorize injury to private or public property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations, and does not authorize the migration of COC offsite to adjacent property." Thus, even as an exception to SWO 29-B, RECAP cannot be used to authorize to allow SNG to injure plaintiff's property or infringe upon the landowners' rights. But that is exactly what SNG is proposing here by leaving environmental damage it caused on plaintiff's property.

Furthermore, SNG employs the Management Options of RECAP to evaluate the damages on plaintiff's property. RECAP outlines general data and submittal requirements for these options, including historical information related to the release, and horizontal and vertical boundaries of the area of interest. SNG has not complied with these and other RECAP requirements. Without meeting these basic objectives, SNG cannot assure the Department that the use of RECAP management options adequately protects human health and the environment.

V. The administrative process cannot be used to interfere with the contractual obligations undertaken by parties to this lawsuit.

Finally, please be advised that plaintiffs and SNG have a private contract whereby SNG has contractually obligated itself to pay for all environmental damage caused by its operations. This private contract fits squarely into Paragraph H of Act 312 of 2006. Thus, regardless of how

⁸ October 27, 2015, DNR Letter to Louis Buatt re: OC Legacy Project No. 038-035-001; March 31, 2015 Response to Agency Comments dated January 12, 2015; HET December 7, 2014 Additional Information to Site Investigation Report; HET August 7, 2014 Site Investigation Report - No Further Action Request; Mark Clark v. Wagner Oil et al.

this Department elects to proceed given plaintiff's comments set forth above, it would seem only appropriate that any decision by this Department specifically acknowledge that the decision should have no impact on the private contractual rights that exist between SNG and the landowner.

VI. The Department, as a result of SNG's failure to comply with SWO 29-B, does not have the requisite information and data needed to adequately support a Most Feasible Plan and meet Court approval.

Our intention in submitting the above comments is to provide this Department with information it might otherwise not have had due to the exceedingly narrow scope of SNG's remediation plan.

With respect to soil, SNG cannot delineate the environmental damage it caused on plaintiff's property, nor can it offer a plan that would comply with the requirements under SWO 29-B absent any exceptions. With respect to the groundwater—and, again, despite admitting that the contamination likely came from SNG's operations—SNG proposes in its Limited Admission plan to simply leave the groundwater contamination untouched and in place. SNG's position is entirely contrary to SWO 29-B as well as the position adopted by this Department in the *Hazel Savoie* matter.

It is plaintiff's recommendation that this Department reject SNG's proposed plan based on SNG's failure to properly comply with the requirements set forth in SWO 29-B. The Department should not be required to render a Most Feasible Plan without the requisite information and data needed to meet the court's approval.

We sincerely appreciate your and the Department's attention to this matter.

Sincerely,

/s/ Emma E. Antin Daschbach

Emma Elizabeth Antin Daschbach

cc: **John Adams**
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