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VIA HAND DELIVERY AND EMAIL

Honorable Richard P. Ieyoub
Commissioner of Conservation
Louisiana Department of Natural Resources
617 North 3rd Street, 9th Floor
Baton Rouge, LA70802

Mr. John Adams, Esq.
Louisiana Office of Conservation
LaSalle Building, 9th Floor
P.O. Box 94275
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Re: Plaintiff's Response to Chevron, U.S.A., Inc.'s Limited Admission Plan
Louisiana Wetlands, LLC, et al. v. Energen Resources Corporation, et al.
16th Judicial District Court, Parish of St. Mary, No. 130-527, Div. "B"
LDNR OC Legacy File No. 016-054-002

Dear Commissioner Ieyoub and Mr. Adams:

On behalf of the plaintiff in the above-captioned case¹ and pursuant to Section 613 of LAC 43:XIX.Chapter 6, we respectfully submit these comments in response to the Site Investigation Report and Remediation Work Plan – Chevron Limited Admission (“Limited Admission Plan”) dated November 9, 2020 submitted by ERM on behalf of Chevron U.S.A., Inc. (“Chevron”) to the Louisiana Department of Natural Resources, Office of Conservation (“LDNR” or “Department”). As required by Sections 613 and 617 of Statewide Order 29B (“29B”), 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.

Chevron’s assessment and proposed remedial work in this case is irresponsible, at best. Chevron did not disclose in its submission to the LDNR important and relevant historical facts, leaving open questions about sources of contamination, extent of contamination, and the appropriateness of Chevron’s proposed remedial plans. Chevron’s proposed plan seeks approval

¹ Plaintiff is James J. Bailey, III, individually and as representative of the Successions of Willie Palfrey Foster and Fairfax Foster Bailey (“the Bailey Family”).

for minimal amounts of work without first considering important issues that have a direct bearing on the extent and degree of contamination on the property at issue. Simply put, Chevron has not done the work necessary to properly evaluate the extent of the problem. More specifically, with regard to groundwater, Chevron's proposed plan would leave in place groundwater contamination that has migrated across publicly-owned lands and likely onto other neighboring property. With regard to soil, Chevron's proposed plan fails to consider salt concentrations at levels that impact sugarcane yields—a fact undisputed by Chevron's experts but ignored in this case. Even in its Hypothetical 29B Plan, Chevron fails to fulfill the regulatory requirements to comply with all aspects of 29B absent exceptions. Without using the appropriate salt standards for remediation, and failing to account for soils below 2 feet in the soil, Chevron's Hypothetical 29B Plan lacks any merit, and the Department must not accept a plan that fails to address these unaccounted-for risks and uncertainty of extent of contamination.

Chevron, as part of its Limited Admission Plan, requests from the Department a number of exceptions to 29B. Pursuant to 29B, a request for an exception must be accompanied by proof of good cause—proof which Chevron has failed to offer here. Indeed, every exception Chevron seeks should be rejected.

First, Chevron's proposal to leave oilfield wastes on the property amounts to passive closure. However, Chevron has not obtained the requisite landowner consent, nor the lab data to demonstrate these constituents do not exceed 29B standards. Failure to comply with these requirements would require exceptions. And, Chevron has not offered any proof of good cause why these provisions should be violated.

Second, Chevron seeks an exception from 29B to leave groundwater contaminated, offering no plans for remediation. The groundwater on the property can yield enough water for domestic use, and there is no good cause to forever foreclose the possibility to use this groundwater in the future by leaving it contaminated with oilfield wastes.

Third, Chevron ignores application of 29B standards in favor of the Louisiana Department of Environmental Quality's ("LDEQ") RECAP standards. RECAP is not designed as a tool to replace the requirements of 29B whole cloth. It is intended to fill in any data gaps that 29B may not address, for example TPH. Chevron cannot present any good cause for the Department to abandon its constitutionally appointed regulations in favor of RECAP.

Fourth, Chevron has failed to delineate the contamination on plaintiff's property—plain and simple. To disregard the rules of 29B in this regard would require an exception. And, Chevron can point to no good cause for not complying with this important requirement of 29B. Without defining the extent of the problem, remedial measures cannot be appropriately formulated to address the unknown.

Fifth, Chevron provides to the Department for consideration a Hypothetical 29B Plan. However, this plan, although intended as a 29B compliant plan, fails to meet all the requirements of 29B. In its Hypothetical 29B Plan, Chevron proposes to clean up the top two feet of soil in Areas 2 and 8. But 29B has no depth restriction and Chevron must obtain an exception if it is to leave its oilfield wastes on the property below two feet. Rooting depths of sugarcane extend well

below two feet, and there is no good cause for leaving contamination, including salts, below two feet, much less from zero to two feet as Chevron proposes in its Limited Admission Plan.

In sum, and critically, the Bailey Family does not consent to Chevron's Limited Admission Plan, and will not consent to a Most Feasible Plan that grants exceptions to 29B. That said, the Bailey Family would support a groundwater plan as outlined in Chevron's Hypothetical 29B Plan in the event extracted wastes are disposed offsite.

1) Chevron did not disclose to LDNR important and relevant historical facts that have a direct bearing on the veracity of Chevron's assessment and proposed remediation.

Chevron failed to inform LDNR that in 1965 Chevron documented a major pollution problem associated with its operation of the Bailey well #2 (sn66581). In an April 1965 internal Chevron memo, Chevron personnel noted that, "Water production has increased and disposal has become a major problem." On March 11, 1963, in an attempt to deal with the increasing water production, Chevron had attempted to dispose of the water down the annulus of the well. There is no record that Chevron, in accordance with the law, obtained a permit to dispose of the water down the annulus. While attempting to dispose down the annulus, Chevron discovered the 16" casing head leaking at the threaded bottom connection which indicated either a hole in the 10-3/4" casing or communication across the 10-3/4" casing hanger. By April of 1965, the FF Bailey #2 well was producing 1,000 barrels of saltwater per day and cumulatively produced 267,350 barrels of saltwater. But instead of installing disposal facilities, Chevron decided instead to rework the well, stating that "in lieu of a major expense job of drilling a disposal well and installing facilities at an estimated cost of \$50,000 plus yearly maintenance costs, it is felt that the well could be successfully recompleted higher in this sand to eliminate salt water production." Thus, motivated purely by economic rather than environmental considerations, Chevron decided to forego installation of a saltwater disposal well. And, as a result of their disposal problems, Chevron noted that "salt water production is excessive and **pollution is a major problem.**"²

Chevron did not attempt to analyze whether the problems experienced at the Bailey #2 well as documented by Chevron's 1965 memo could serve as a likely source of contamination deserving further evaluation. In deposition testimony, Mr. Michael Pisani testified that he had examined the 1965 memo and other related documents.³ But, Mr. Pisani did not disclose these documents to the LDNR in his report. Nor did anyone at ERM evaluate this issue, despite acknowledgment by Mr. Pisani that well integrity issues can cause issues that deserve further review.

Michael Pisani (12/30/2020)

Q. Okay. Was that part of your -- part of your -- your task in this case to look at any mechanical failures of wells?

A. No. That's not something I normally do.

Q. Okay. Is there anyone at ERM who typically looks at that?

A. No. Typically on these type exercises we have an oil and gas expert if you will that knows those things down hole and that person can speak to that. Generally those

² April 7, 1965, Chevron memo re: Workover Proposal "A"; 11,200 SUA, F.F. Bailey #2 [A2170084 0012544] – **Attachment #1**

³ M. Pisani, deposition 12/30/2020 (P57:11 – P58:6, draft). – **Attachment #2**

things are not an issue for us the only time they become an issue for us is when we have a -- which is a big event or sometimes if we have an injection well that leaked to the surface. Those two things can cause issues we have to look at but other than that we don't see issues concerning that.

(P54:6 – P55:1, draft transcript)

Q. Now, did you put anywhere in your submission to the department of natural resources this memo where Chevron is describing the saltwater production being excessive and pollution being a major problem?

A. No. I don't -- I don't recall putting that in my report.

(P59:12-18, draft transcript)

Because it excluded from its submission to LDNR important relevant historical documents regarding past violations and releases, Chevron cannot assure the Department that the assessment and proposed remediation adequately consider all potential sources of contamination to the soil and groundwater on plaintiff's property. In particular, Chevron's experts have not evaluated whether the Bailey #2 well continues to pose risks of contamination, whether the well contaminated underlying groundwater resources, or whether the well's condition suggests more insidious problems not evaluated by Chevron. Chevron failed to disclose the Bailey #2's known mechanical problems and, therefore, failed to comply with RECAP data submittal requirements, which mandate disclosure of all historical information related to the release. Under RECAP, if these data requirements are not met, LDEQ approval must be obtained **prior to** any submission of a MO-1 or MO-2 assessment.⁴ Chevron has not obtained the requisite LDEQ approval of its MO-1 & MO-2 assessment submitted in this case to LDNR for review.

Most troublesome is Chevron's unsubstantiated declaration that "its historical operations were reasonable, prudent, and consistent with its lease terms and industry practice." In its Limited Admission Plan, Chevron's experts have made no effort to evaluate Chevron's historical operational practices and offer no opinions to support Chevron's assertion. In fact, as noted, Chevron failed to even supply relevant historical materials to LDNR going directly to the prudence of Chevron's past operations, such that the Department has no basis on which to conclude whether Chevron's operations were reasonable and prudent at all.

Likewise, Chevron's experts have made no findings here supporting Chevron's assertion that Chevron complied with applicable lease terms. Notably—instead—Chevron's expert Mr. Calvin Barnhill previously offered testimony in other matters whereby he explained that exceedances of 29B such as here do indeed constitute a breach of the lease. Mr. Barnhill testified in *State of Louisiana, et al. v. Louisiana Land & Exploration Co., et al* as described by Louisiana's 3rd Circuit Court of Appeal:

Calvin Barnhill, certified by the court as an expert in petroleum engineering, oilfield operations, oil and gas industry standards and regulations, application and implementation of mineral and other leases and provisions, testified on behalf of Unocal. He testified as follows, in clarifying what encompasses 'normal wear and tear:'

⁴ See RECAP, pg. 84-85 & 92-93

A. [I]f it's under regulatory requirements, then that would fit in my definition of wear and tear. If it's over regulatory requirements, then it something that needs to be addressed in a common sense fashion.

....

Q. [T]he 1935 lease didn't give Unocal or anybody else the right to violate any of the state regulations, state laws, state standards, did it?

A. It does not.”

The above excerpt indicates that Unocal did not have the right to contaminate VPSB's Sixteenth Section lands under the 1935 Lease. Moreover, a finding that Unocal did have the right to contaminate VPSB's land under the 1935 Lease is contrary to law.⁵

The LDNR must not condone conduct that constitutes a breach of Chevron's contractual obligations owed to the plaintiff in this case by approving a Most Feasible Plan that fails to comply with 29B.

2) Chevron has not fully delineated the environmental damage on the property at issue, and its testing has demonstrated migration offsite.

a. Chevron has not horizontally delineated the groundwater contamination in Area 2, which has migrated offsite to publicly-owned property.

Chevron's operations in Area 2 have contaminated the groundwater on the property at issue with several different contaminants. The extent to which the plume of contamination has migrated horizontally has not been fully determined. For example, as depicted in Figure O-3 of Chevron's Hypothetical 29-B Plan, the concentrations of chlorides detected at sample location EN-31 exceeds background and secondary maximum contaminant levels (“MCLs”). The groundwater direction generally flows from northeast to southwest—from Chevron's well site in Area 2 toward sample location EN-31.⁶ Therefore, the extent to which the chloride plume resulting from Chevron's operations extends beyond EN-31 is unknown.

Also, as the contamination in the groundwater extends from Chevron's well site in Area 2 toward sample location EN-31, those contaminants exit the subject property, migrating to and under publicly-owned lands (i.e. Hwy 90) until again reaching the property at issue. The plume likely continues to extend beyond EN-31, again exiting the property at issue onto an adjoining landowner's property. Migration of contamination offsite is not authorized by RECAP, and should not be allowed by this Department to persist without remedial attention. Chevron proposes, as a result of its migrating contamination, to leave its contamination on publicly-owned property, to

⁵ May 7, 2020, *State of Louisiana, et al. v. Louisiana Land & Exploration Co., et al.*, 19-0248; Court of Appeal, 3rd Circuit, Ruling on Appeal – **Attachment #3**

⁶ See D. Angle, deposition 12/30/2020 (P207:9 to P208:6, draft). – **Attachment #2**

present the Bailey Family with future potential risk of liability, and to have LDNR approve a plan that contains uncertainty as to exactly where the contamination extends.

b. Chevron has not vertically or horizontally delineated the soil contamination in Area 2, and fails to use the appropriate standards to evaluate damage to sugar cane.

Chevron has failed to vertically delineate the contamination in the soil in Area 2 to 29B standards. At multiple sample locations, exceedances of 29B standards occur at the deepest depth interval. At some locations, the concentrations of contamination increase with depth. For example, at EN4 and 4R, sample results indicate exceedances of electrical conductivity (“EC”), TPH, O&G, and several TPH fractions at the deepest depth intervals. At sample location HA-3, concentrations of EC and TPH increase with depth, with the highest exceedances occurring at the deepest depth.⁷

Salt parameters in Area 2 have also not been adequately horizontally delineated. In previous cases, Chevron’s experts have acknowledged that sugar cane growth can be inhibited at an EC higher than 1.7. Mr. Arville Touchet, as part of his work in *Sterling Sugars, Inc. v. BP America Production Company, et al*, offered the opinion that EC’s higher than 1.7 mmhos/cm reduce yield of sugar cane crops, stating that “According to Ayers and Westcot and affirmed by research in South Texas, sugar cane shows no reduction in yields with soil EC of 1.7 mmhos/cm. When soil EC is 3.4 there is a 10 percent reduction in yield. Soil EC of 5.9 shows 25 percent reduction in yield. Soil EC of 10 shows a 50 percent reduction. There was no production at soil EC of 19 mmhos/cm.”⁸ Mr. Touchet’s review of the data in *Sterling* coupled with his field observations on the Sterling property confirmed these findings.

In *New 90, LLC, et al. v. Grigsby Petroleum, Inc., et al.*, Dr. Luther Holloway reaffirmed Arville Touchet’s findings made in connection with the *Sterling* case.

Dr. Luther Holloway, *New 90, LLC, et al. v. Grigsby Petroleum, Inc., et al.* (12/7/2018)

Q. And what was your threshold for determining whether or not it was impacted or not based on that data?

A. Well, it -- it gave me the limits of the -- of those -- those parameters or whatever you want to call them. A lot of people don't like to call them parameters, variables, and the extent of those. And so you knew you were going from an area that had impact -- that had impacts to clean soil or soil similar to the background soil.

And one of the key issues here is you are looking at an electrical conductivity of 1.7 for sugar cane. Now, that doesn't mean that sugar cane won't grow at higher electrical conductivities. **You get a reduction in growth starting -- it's been my experience in looking at cane around two, up to two and a half, something like**

⁷ See Table 1 showing exceedances at lowest depth interval tested for each constituent – **Attachment #4**

⁸ July 2013, Soil Remediation Plan, Sterling Sugars Property, Submitted to Chevron USA, Environmental Management Co., Generated by PMI, LLC and Michael Pisani & Associates, Inc. [New 90_MPA_SDT_004823 at 4845] – **Attachment #5**

that. Get up to about three and a half, you'll get maybe something real perceptible like about a 10 percent decline, and it goes on up from that.
(P111:4 – P112:6, emphasis added)⁹

In this case, Chevron uses an EC of 4 to examine Chevron's well site in Area 2. They did not delineate the soil to an EC of 1.7, but instead chose an EC of 4.

Michael Pisani (12/30/2020)

Q. Okay. Did you delineate the EC in the most feasible plan limited admission area in area two to an EC of 1.8 or 1.7?

A. No. We used the EC of four which is the 29-B agronomic limit and then Dr. Holloway came on top of us and did his own site inspection measurements and all the things he does to arrive at a conclusion that there was -- well, I'll let him conclude whatever he concluded but either no or very little impact outside the pit area. But I'll let him speak to that and he will say the way he says it and I'll live with how he says it.

(P91:10-22, draft transcript)

Without knowing the full extent of damage to the soil caused by Chevron's operations in Area 2, Chevron's proposed plan submitted by Chevron falls short in complying with the specific delineation requirements in 29B. As a result, additional work is needed to reach full delineation of the environmental damage caused by Chevron.

c. Chevron has not vertically delineated the soil contamination in Area 8.

Chevron conducted shallow sampling of soils in Area 8 and collected no groundwater samples from this area. Several samples show barium exceedances of screening standards at the lowest depth interval for that constituent, including SB-15, SB-16, SB-24, and EN-22. Sample results from EN-22R show exceedances of TPH-D, O&G, and TPH fractions at the lowest depth interval at that sample location. While adjacent to EN-22 which shows no exceedances at deeper depths, the concentrations of O&G and hydrocarbon fractions found at EN-22R far exceeded those found at EN-22. Additional testing is necessary to fully delineate Area 8 in compliance with 29B.

3) Chevron proposes to leave its contamination in an otherwise useable groundwater resource.

Chevron in classifying the groundwater here as Class 3, summarily disregards the future potential use of this groundwater resource and proposes to leave its contamination on the property forever. However, multiple monitoring wells on the property produced volumes that exceed the EPA's recommended yield for class 2 wells of 150 gallons per day and less than 10,000 mg/L.¹⁰ In fact, monitor well EN-4, where the only slug test within Chevron's disposal pit in Area 2 was performed, demonstrated a yield of 1,349 gallons per day. Despite LDEQ's classification system,

⁹ L. Holloway, deposition 12/7/2018, in *New 90, LLC, et al. v. Grigsby Petroleum, Inc., et al.* – **Attachment #6**

¹⁰ EPA, Guidelines for Ground-Water Classification under the EPA Ground-Water Protection Strategy, December 1986 – **Attachment #7**

the groundwater resources on the subject property can provide enough yield to be used as a potable water source.

Chevron has contaminated the groundwater on the subject property with oilfield wastes. And pursuant to 29B, contamination of groundwater aquifers with E and P wastes is strictly prohibited.¹¹ In fact, the LDNR has explicitly recognized that SWO 29-B contains background concentration requirements for groundwater.¹² Chevron proposes an exception to this rule without obtaining landowner consent, and instead uses RECAP as an alternative to avoid any remediation of the otherwise usable groundwater resource. To use RECAP and leave behind groundwater contaminated with oilfield wastes would be to disregard the future potential use of this groundwater resource.

In fact, Chevron's proposal to leave salt contamination in the soil would ensure the continued contamination of the groundwater on plaintiff's property. In other words, contaminants left in the soil would serve as a continuing source of contamination for the underlying groundwater.

Michael Pisani (12/30/2020)

Q. It's your opinion that the salt in the soil will continue to leach downward into the groundwater?

A. Yeah. It's just as its done in the last 40 years or 50 years.
(P113:5-9, draft transcript)

Furthermore, LDEQ has previously found usable groundwater at nearby facilities, determining that groundwater at a nearby site in Franklin at the Franklin Fire Department met Class 2 specifications. At that facility, located on the west side of Bayou Teche and just 700 yards away from the plaintiff's property, the LDEQ placed the groundwater into a Groundwater Classification 2 (GW2B) based on a one-hour pumping test of a single monitoring well screened at a depth of 15 feet.¹³ Chevron did not disclose to the LDNR these LDEQ findings and determinations for this facility located in such close proximity to the subject property, despite having previously examined these materials.¹⁴

The property at issue contains a groundwater resource with potential future use. Chevron proposes to condemn this potable groundwater supply from ever being used by leaving its oilfield constituents in the soil and groundwater on the property, without landowner consent. The Bailey Family does not consent to Chevron's Limited Admission Plan, and requests LDNR to adopt a Most Feasible Plan that complies with 29B and remediation of this useable groundwater resource.

¹¹ LAC 43:XIX.303(C)

¹² 2011, First Amended Memorandum of Understanding Between Louisiana Department of Natural Resources Office of Conservation and Louisiana Department of Environmental Quality Regarding Approval of RECAP Groundwater Evaluation and Remediation Plans at Oilfield Sites. Office of Conservation. February 25.

¹³ October 27, 2009, LDEQ No Further Action Notification, AI#75104 [LDEQ EDMS 6070854] – **Attachment #8**; April 30, 2003, KourCo Environmental Services, 2003 Annual Groundwater Monitoring Report AI#75104 [LDEQ EMDS 1771898] – **Attachment #9**

¹⁴ See D. Angle, deposition 12/30/2020 (P246:10-21, draft).

4) Without consent from the landowner, Chevron’s proposed remediation plan violates 29B.

Chevron proposes to excavate extremely limited amounts of soil to remove environmental damage caused by its operations. In Area 2, Chevron plans to remove soil from 8 to 18 feet in a 50’ x 50’ area to address hydrocarbon exceedances, while offering no plans for groundwater remediation. In Area 8, Chevron offers no plans for remediation for soil or groundwater, but only offers to level existing berms. In both Areas, Chevron will leave its oilfield constituents that exhibit concentrations exceeding the standards set forth in 29B. Heavy metals, salts, and hydrocarbons, all exceeding 29B criteria, will remain on the site untouched by Chevron’s proposed remedial plans.

As an example, Chevron ignores exceedances of salt parameters in Area 2. Without considering effects on sugar cane from EC levels that exceed 1.7 and with plans to leave salt parameters in the soil on plaintiff’s property, Chevron’s plans will not protect the subject property from a decline in sugar cane yields. And, even in its Hypothetical 29B Plan, Chevron ignores the environmental damages that exist below two feet, despite the fact that 29B contains no depth restrictions. It is important to note that the effective rooting depth of sugarcane in Louisiana has been documented to extend well below two feet.¹⁵ Furthermore, in LDNR’s Most Feasible Plan in connection with the *Agri-South* case, the Department explicitly ruled that SWO 29-B contains no depth limitation for delineations of 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.611.¹⁶

The failure to remove oilfield constituents from the soil and groundwater placed on the subject property as a result of Chevron’s operations constitutes an exception from 29B, which

¹⁵ Sheffield, R.E. and D.C. Weindorf, “Louisiana Irrigation, Irrigation Scheduling Made Easy: Using the ‘Look and Feel’ Method,” Louisiana State University, Agricultural Center. – **Attachment #10**

¹⁶ *Agri-South, LLC, et al. v. Exxon Mobil Corporation, et al.*, Louisiana Department of Natural Resources, Office of Conservation’s Most Feasible Plan Developed and Submitted as Required by LA. R.S. 30:29 (emphasis added).

requires landowner consent. Chevron has not, and will not, obtain such landowner consent in this case to leave its oilfield constituents on the subject property.

Chevron is using RECAP as a tool to replace 29B. However, RECAP should not be used to replace 29B, but merely supplement it where 29B does not address certain situations or contaminants. The Department should not use other regulatory standards, including RECAP, unless for some compelling reason and when such use is necessary to fully protect a public interest not adequately covered by SWO 29-B. The Department should remain consistent with its own established policy. The Department has followed a policy to disallow the use of RECAP unless the subject landowner consents. The agency has remained consistent with this policy for over a decade, including after the enactment of Act 312 in 2006.¹⁷ The rationale for this policy is justified—if the use of a less stringent regulatory standard (i.e. RECAP) will allow a party to leave contamination on landowner’s property, that landowner should have an opportunity to deny this request. The Department should not change its policy of fully protecting the public interest merely because a party has partially admitted responsibility for intentionally causing contamination.

Furthermore, Chevron’s proposal to leave oilfield wastes on the property amounts to passive closure. However, Chevron has not obtained the requisite landowner consent, nor the lab data to demonstrate these constituents do not exceed 29B standards—both specifically required under 29B to allow for passive closure. Chevron has not complied with these regulatory requirements and good cause does not exist to justify granting of an exception to allow Chevron to forever leave its oilfield wastes on plaintiff’s property.

5) Chevron’s “Hypothetical 29B Plan” does not satisfy regulatory requirements for submitting a plan that complies with all the provisions of Statewide Order 29-B, exclusive of §319.

As part of its Limited Admission Plan, Chevron proposes to leave soil contaminated to depths of greater than 40 feet and groundwater containing those same oilfield constituents stretching across property boundaries. This proposal does not comply with 29B requirements. So, in an effort to supply a separate plan that complies with 29B requirements, Chevron offers a Hypothetical 29B Plan. However, despite its hypothetical plan, Chevron still fails to comply with 29B requirements.

Chevron’s Hypothetical 29B Plan for soil proposes to clean soils from 0 to 2 feet. All other 29B constituents below that depth will remain in place. This proposal fails to fully comply with 29B requirements, which contains no depth restriction.

Chevron’s Hypothetical 29B Plan for soil is based, in part, on a composite analysis of O&G constituents in soil samples taken in Area 2. Chevron’s experts compiled two composite samples to evaluate O&G concentrations in Area 2—one for samples from 0 to 10 feet, and the other for

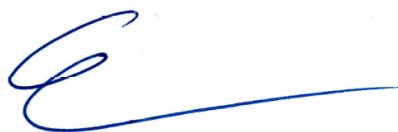
¹⁷ See, e.g., October 4, 2010, LDNR Letter to Sinclair Oil & Gas Co. re: Compliance Order No. E-I&E-09-0953; September 24, 2014, LDNR Letter to Charles Minyard re: September 3, 2014 HET Groundwater Monitoring and Site Investigation Report, First and Second Quarters of 2014; Betty D. Blanchard, et al. Lease, Jeanerette, St. Mary Parish, Louisiana, Compliance Order No. E-I&E-05-0233, October 5, 2015, LDNR Letter to McGowan Working Partners, Inc. re OC Legacy Project No. 031-016-001.

samples from 0 to 18 feet. Sample results were averaged across sample locations and compared against 29B standards. According to Chevron's results, the composite results from 0 to 10 and 0 to 18 feet both fell below the 29B standard of 1% oil and grease. Based on this analysis, Chevron concludes that no remediation is required to remove O&G from Area 2 to comply with 29B. However, Chevron's analysis is flawed. Chevron, as part of its calculation, failed to consider ICON's sample results. When averaging all sample results from both parties for the 0 to 18' composite sample, O&G exceeds the 29B standard of 1%.¹⁸ Chevron's Hypothetical 29B Plan for soil does not comply with 29B.

For groundwater, Chevron's Hypothetical 29B Plan proposes to target chlorides for remediation. This plan does not include costs for offsite disposal, but includes costs for the construction, operation, and maintenance of an on-site disposal well. This proposal flies in the face of property rights and interferes with the inherent rights of the landowner to determine how it will use the property. Chevron must include costs for offsite disposal and beg off its assumption that it can force the landowner to dispose of Chevron's waste on the subject property. The Bailey Family does not consent to onsite disposal of Chevron's waste in the event the Department includes in a Most Feasible Plan a groundwater remediation component.

We appreciate your consideration of this response to Chevron's submission and stand ready to answer any questions you may have.

Respectfully submitted,



Emma Elizabeth Antin Daschbach

¹⁸ See, Table 2 compiling sample data collected by ICON and ERM for O&G at sample locations used by Chevron as part of its composite sample calculations – **Attachment #11**; See also, Element lab data sheets documenting composite analysis as requested by ERM – **Attachment #12**