

September 11, 2015

Via HAND DELIVERY (hardcopy and electronic copy)

Mr. James H. Welsh
Commissioner of Conservation
Louisiana Department of Natural Resources
617 North 3rd Street, 9th Floor
Baton Rouge, LA 70802

Re: *Sterling Sugars, Inc. v. Amerada Hess Corporation, et al.*
17th Judicial District Court, Parish of Lafourche, No. 100091, Div. "D"
DNR OC Legacy File No. 016-024

Dear Commissioner Welsh:

On behalf of Raceland Raw Sugar, LLC ("Raceland") and pursuant to Section 613 of LAC 43:XIX.Chapter 6, we respectfully submit these comments to the remediation plan proposed on behalf of Hess Corporation ("Hess") in the above-captioned matter. On the whole, Hess's plan violates the most basic tenets of 29-B, and the below comments delineate how. 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; we have included in this submission all groundwater testing data along with a table summarizing same; and we have copied here all parties to the above-captioned matter.

As you are aware, Hess operated on Raceland's property in the Raceland Field from 1937 to 2006. During those several decades of stewardship over Raceland's property, Hess contaminated the soil and the shallow groundwater aquifer. There is no dispute on this point; Hess's own experts concede it:

John Conner, PhD (7/28/2015)

Q. Would you agree with me that to a reasonable degree of scientific certainty that the oil and gas operations of Hess caused groundwater contamination in the uppermost groundwater aquifer on this property?

A. **I believe that the oil and gas operations have impacted the uppermost groundwater unit at this property.**

Q. Okay.

A. Specifically **due to produced water releases.**

A. Yes. There's – as we have discussed a number of times and in my report –

Q. Yeah.

A. – **those – those chemical conditions are associated with produced water –**

Q. Uh-huh (affirmatively).

A. – **linked to past oil and gas operations –**

Q. Right.

A. – **or oil and gas operations, yes.**

(pp. 45:5-16; 245:1-10) (emphasis added).

Frank Edwards (6/26/15)

Q. Would you agree with me that **more likely than not the contamination and the areas that you have proposed to remediate were caused by the oil and gas operations of Hess?**

A. I can't say who they were caused by. **I can say that they were E&P waste related and they were associated with oil and gas operations.**

Q. . . . As we are sitting here today, **or do you have any testing data or anything that would support an opinion that you would offer at trial that anything other than the Hess operations on this property caused the contamination** the subject of your cleanup?

A. From a chemical standpoint, **we do not** have that data to date....

(p. 55:21-56:2; 72:9-16) (emphasis added).

Despite the above concessions; despite the fact that Hess's operations have permanently scarred Raceland's property decimating the previously existing cypress stand and altering the very character of the property; and despite the fact that this Department explicitly directed Hess on more than one occasion in 2014 to provide written notice of Hess's efforts to "assess/address soil and/or groundwater conditions" at the property¹, Hess has proposed an exceedingly narrow remediation for the soil contamination and no remediation whatsoever for the groundwater contamination.

With respect to the soil, Hess has failed to delineate the full extent of the contamination in the areas it proposes to address, and Hess has completely ignored other multiple areas of the Raceland property at which soil contamination exceeds 29-B standards. Hess's plan proposes to leave extensive contamination throughout the property – both at the areas Hess does plan to address and the many areas Hess's plan ignores. Furthermore, Hess's plan contends that no salt parameters should apply to even the few areas Hess proposes to address because the contaminated area is a submerged wetland. However, not only has this Department classified the site as an elevated wetland², Hess's own experts confirm that Hess was responsible for inundating the area

1 See April 1, 2014 and May 21, 2014 Letters from Gary W. Snellgrove to Bill Huffmeyer, attached hereto *in globo* as Exhibit 1.

2 See Production Pit Inspection Report, Section C: Site Makeup, attached hereto as Exhibit 2.

and converting it from an elevated wetland to a submerged one:

Tonja Koob (6/23/2015)

Q. Okay. One thing that I noticed in this '62 aerial is it looks like the space, the area between the first two north/south canals –

A. Here?

Q. Yes.

A. Okay.

Q. It looks like that has turned to open water in some – in the center; is that's what's happened?

A. I would say that it disappear that it is developing a low area. It has that darker color. What it looks like is the – that impounded area is starting to create a bowl. So we've got a lower center and higher sides that come up along – along the spoil banks.

A. This has, as we discussed before, it has this – this bowl shape and that was when I drew that big circle on one of the other exhibits where as we put in these canals and you have the canal spoil banks and you put in roads and you have the road beds elevated, as all of this infrastructure – and we have the ring levee that's around the tank battery and down here by this pit, as you put in these – **these infrastructure elements that I just described you are creating this bowl.** You are raising the sides of the bowl....

(p. 96:16-97:5; 139:5-16) (emphasis added).

Given the above, an EC limit of <8.0 mmhos/cm and an SAR limit of <14 should be applied throughout the property – to the few areas Hess proposes to address and to the other multiple areas Hess ignores. As set forth in the figures attached hereto,³ the salt contamination throughout the property is extensive. Indeed, it reaches all the way from the injection wells located adjacent to the canals to areas outlined by the formerly existing cypress swamp. And, the overall destructive impact on the property is even evidenced in the historical aerials of the property attached hereto.⁴ Hess should not be held to a lesser standard when its very own actions were the cause of any alteration in the character – and ultimate destruction – of the property.

With respect to the groundwater – and, again, despite admitting that the contamination likely came from Hess's operations – Hess proposes simply leaving the groundwater contamination untouched and in place. But, Hess not only relies on an engineer not licensed in Louisiana to support its position, Hess's position is entirely contrary to 29-B as well as the position adopted by this Department in the *Hazel Savoie* matter.⁵

3 See Figures 1 through 6 prepared by ICON Environmental Services, Inc. showing the approximate horizontal extent of EC and SAR exceedances at increasing depths, attached hereto as Exhibit 3.

4 See Historical Aerials dated 1941 and 1973, attached hereto *in globo* as Exhibit 4.

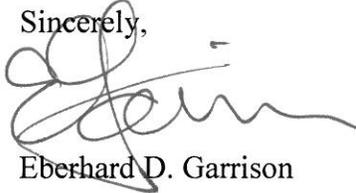
5 See Figure 6 of GSI Environmental Inc.'s March 30, 2015 report showing the areas of the groundwater containing produced water, attached hereto as Exhibit 5.

Importantly, as indicated above, while Hess has made a limited admission of liability for the soil contamination, Hess has made no admission for the groundwater contamination it caused. Thus, Raceland reserves its rights as to the admissibility at trial of any feasible plan addressing ground water contamination on the property. That aside, Raceland respectfully submits that the contaminants in the shallow groundwater will continue to contaminate the soils as well as the surface water and sediments in the canals in the areas which Hess plans to remediate. Given that, it would not seem prudent to address the soil contamination Hess caused without also addressing the groundwater contamination Hess caused and, in particular, the resulting continuing environmental damage to Raceland's property. In fact, recontamination of soil from groundwater has already been confirmed at AOI-5 where Hess's former emergency pit was located. The pit was closed in 1989 with post-closure oil and grease levels well below 1.0%. And yet, testing at that site in 2014 – 25 years after the pit was closed – revealed concentrations in excess of 4%. The only potential source of re-contamination is the contaminated shallow groundwater aquifer below the pit. It is undisputed that the upper bearing groundwater is above the deepest depth of the pit.

Finally, please be advised that Raceland and Hess have a private contract whereby Hess 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 this Department elects to proceed given Raceland'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 Hess and the landowner.

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 Hess's remediation plan.⁶ We sincerely appreciate your and the Department's attention to this matter.

Sincerely,



Eberhard D. Garrison

cc: **Chairman Thomas E. Balhoff (via email)**
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Honorable Judge Christopher Boudreaux (via hand delivery)
17th Judicial District, Parish of Lafourche
Courthouse Annex, 3rd Floor
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⁶The referenced groundwater testing data along with the table summarizing same is attached hereto as Exhibit 6.

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