

STATE OF LOUISIANA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF CONSERVATION

IN RE:

LDNR OC Legacy Project No. 014-006-001

The Sweet Lake Land and Oil  
Company, LLC, vs. Oleum  
Operating Company, L.C., et al.,  
14<sup>th</sup> JDC, Calcasieu Parish,  
Docket No. 10-1272

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**SWEET LAKE'S MOTION, AND INCORPORATED MEMORANDUM,  
TO STRIKE BP'S PLAN AND EVIDENCE**

The Sweet Lake Land and Oil Company, LLC, the plaintiff/landowner, moves to (a) prevent the plan filed by BP Products North America, Inc., BP Exploration & Oil, Inc., BP Exploration, Inc., and Sohio Petroleum Company (collectively "BP") from being heard and advertised, (b) prevent BP from presenting evidence at the hearing, and (c) deny it any exception to Statewide Order 29-B pollution regulations based on its intentional violation of LAC XIX.43.611 and misrepresentation to the Office of Conservation. LAC XIX.43.637. BP did not submit a plan that restored the property into compliance with 29-B. Instead, BP submitted a remediation plan which it knew depended upon exceptions to LAC XIX.43.313 but nevertheless represented to the Office of Conservation ("Conservation") that no exception was needed. Conservation should grant the requested sanctions. Indeed, it is hard to imagine LAX XIX.43.637 having any efficacy at all if it is not applied to such a flagrant violation particularly where, as here, Conservation will have all the data obtained by all experts by virtue of Sweet Lake's submittal.

## I. Background.

In *The Sweet Lake Land and Oil Company, LLC, vs. Oleum Operating Company, L.C., et al.*, Docket No. 10-1272, 14th JDC, Parish of Calcasieu, State of Louisiana, the court, acting pursuant to Louisiana Revised Statutes section 30:29 (“Act 312”), ordered BP to submit to Conservation a plan to remediate Sweet Lake’s property in Section 34, Township 10 South, Range 06 West, Calcasieu Parish (the “Property”) to regulatory standards. On December 10, 2015, BP submitted to Conservation a “Proposed Remediation Plan” (the “Plan”) in which it repeatedly stated that the Plan will bring the property into compliance with Statewide Order 29-B without any exceptions. *E.g.*, BP Plan, Executive Summary, p. 1 (“The restoration plan presented at trial by defense experts is the same plan contained here within that is compliant with Statewide Order 29-B without exceptions”); BP Plan, Intro., p. 1 (“plan is submitted on behalf of BP . . . and is compliant with Statewide Order 29-B without exceptions.”); BP Plan, p. 39 (same).

## II. Regulations Governing Act 312 Proceedings.

Remediation plans must contain “a statement that the plan is to evaluate or remediate the environmental damage in accordance with the requirements of the applicable rules and regulations of the Office of Conservation.” LAC 43.XIX.609(A)(4). Section 611 provides that the “Commissioner of Conservation **shall consider only** those plans filed in a timely manner and in accordance with these rules and orders of the court.” *Id.*, §611 (A) (emphasis added). Section 611 further provides that each plan “shall comply with the standards set forth in Statewide Order 29-B.” *Id.*, §611 (F). Any party that requests an exception to 29-B must submit a plan that complies with all the provisions of Statewide Order 29-B **and a separate plan** that includes sufficient proof that there is good cause to grant an exception or exceptions sought under section 319, sufficient proof

showing that the exception or exceptions sought under section 319 do not endanger USDW's, and a citation to the Louisiana rules, regulations or statutes sought to be applied in lieu of Statewide Order 29-B. *Id.*, §611 (F)(emphasis added). Section 637 provides that failure to comply with these rules may result in the plan not being considered or may prevent a party from presenting evidence. *Id.*, §637.

### **III. BP's Plan Is Not Compliant With Statewide Order 29-B.**

BP's submission to the Commissioner does not comply with Section 611. BP's experts detected contamination in excess of 29-B in soil and groundwater that BP's plan will not remediate. Ex. 1, Table with Contamination BP's Plan Does Not Remediate; Ex. 2, HET's Tables of Sampling Results. Specifically, BP's submittal does not remediate 29-B salt parameters in the soil deeper than three feet below the surface; instead, BP evaluates that salt impact under RECAP. *Id.*; BP Plan, pp. 23, 40. It is questionable whether BP's Plan will even restore the top three feet to compliance with 29-B because Gulf Coast Agriculture Associates' plan was not designed to address 29-B but rather to provide vegetative cover. *See* Ex. 3, Sagrera Trial Test., pp. 3595-96 (at the end of the five year restoration period, salt parameters should be "real close" to meeting 29-B; as time goes by, they would be "expected" to be in compliance with 29-B). BP's Plan also fails to remediate arsenic, selenium, oil and grease, benzene, and other hydrocarbon fractions in the soil and groundwater in accordance with Conservation's regulations. Ex. 1, Table with Contamination BP's Plan Does Not Remediate; Ex. 2, HET's Tables of Sampling Results; BP Plan, Executive Summary, pp. 3-4. BP has neither submitted a fully compliant plan nor sought an exception to the 29-B regulations.

29-B does not contain a depth limitation. *See* Ex. 4, 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 (“There is no depth limitation included in the 29-B salt standards. Salt parameter exceedances below three feet must meet the 29-B standards, unless there is an exception for good cause granted pursuant to LAC 43:XIX.319.”); Ex. 5, LDNR Depo. (Sandoz), p. 71, 1. 2-4 (“Q Does 29-B contain any depth limitations on remediation? A No, not that I’m aware of.”). 29-B soil remediation standards for salt parameters (EC, SAR, ESP) created by exploration and production activities apply regardless of the depth at which these parameters are located.

BP’s Plan either does not address, or applies a RECAP management option to avoid cleaning up, arsenic, selenium, benzene, and other hydrocarbon fractions in the soil and groundwater. Additionally, BP’s plan proposes only groundwater monitoring, using RECAP to avoid any clean up. BP Plan, pp. 26-27. This Plan does not comply with 29-B because it does not reduce the arsenic and selenium into compliance with 29-B standards and it does not reduce benzene and hydrocarbons in the soil and groundwater to “background concentrations.” See Ex. 4, Written Reasons, Agri-South, pp. 14-15 (plan did not comply with Chapter 6 where groundwater monitoring strategy required exception because it did not bring groundwater to “background concentration,” as required by February 25, 2011 LDNR/LDEQ First Amended Memorandum of Understanding and 43:XIX.303.C, and application of RECAP considered exception to 29-B). HET, BP’s expert, participated in the Agri-South proceeding before Conservation, and the Agri-South ruling was one of BP’s proposed exhibits at the trial of this matter.

BP’s Plan will not remediate the Property to compliance with Statewide Order 29-B and it did not include a separate plan that would. BP has neither requested an exception to 29-B nor articulated good cause for one. Yet BP represented that its plan complied with 29-B without exception.

**IV. BP's Failure to Submit a Compliant Plan and Deliberate Misrepresentation to Conservation Warrants Sanctions Under Section 637.**

BP cannot claim ignorance of Conservation's regulations or the fact that its Plan does not comply with them. BP's experts, Brent Pooler and Stuart Stover, previously admitted under oath that BP's plan required an exception to 29-B. *See* Ex. 6, Pooler Depo, pp. 8-10 (plan requires exception); Ex. 7, Pooler Trial Test., pp. 3819-20 (plan relies on exception to meet 29-B standards); Ex. 8, Stover Depo., pp. 63, 153-54 (application of RECAP by DNR requires an exception to 29-B which can only be obtained through landowner consent or a contradictory hearing before DNR); Ex. 9, Stover Trial Test., pp. 3977-79 (did not prepare plan to restore water to background concentration, application of RECAP for remediation of groundwater is considered an exception under Statewide Order 29-B). Nevertheless, BP told Conservation that its plan complied with 29-B without exceptions. BP Plan, Executive Summary, p. 1; BP Plan, Intro., p. 1; BP Plan, p. 39.

BP's Plan should not be advertised or heard by Conservation and BP should be prevented from presenting evidence in this matter because it did not comply with section 611 and it made a false statement to Conservation that it did. Title 43, Part XIX, Chapter 6, Section 637. Making false statements to Conservation and filing false reports are prohibited by statute. La. Rev. Stat. Ann. §§ 30:17 and 30:18.

BP cannot rely on Conservation's ruling in Tensas Poppadoc, Inc. et al versus Chevron U.S.A., et al, 7th JDC, Concordia Parish, No.40769-B, Docket No. ENV 2008-L-01. Tensas Poppadoc was Conservation's first hearing under its Chapter 6 regulations. Conservation noted that the plan submitted by Chevron, the responsible party, did not meet the regulations because it did not comply with 29-B without exception. But Conservation denied the motion to strike Chevron's plan

because (1) this was the first time a hearing under Chapter 6 had been held and (2) Conservation wanted to ensure that all relevant environmental data, as well as options for evaluation and remediation, were properly considered. Ex. 10, Reasons For Ruling, p. 3. There was no evidence that Chevron falsely claimed that its plan complied with 29-B without exception.

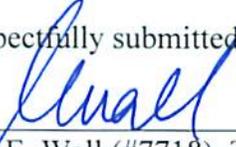
The factors that Conservation relied on in Tensas Popadoc are not present here. First, this is not the first time a hearing has been held under Chapter 6. BP is acutely aware of the requirement to submit a plan that complies with Chapter 6, and the potential consequence of failing to do so, as the Tensas Poppadoc ruling was one of BP's proposed exhibits at the trial of this matter. BP knew of the requirement, knew its plan did not meet the requirements, and falsely told Conservation that it did meet the requirements. Second, Sweet Lake has submitted all of the data, including BP's data, in connection with its proposed plan, therefore ensuring all relevant data is considered. Sweet Lake has also considered all remediation options. Third, unlike Tensas Popadoc, BP knew that its plan did not comply with 29-B without exception but nevertheless told Conservation that it did.

BP's flagrant violation of Chapter 6 coupled with its misrepresentation to Conservation is the precise instance in which the section 637 penalty provision should be applied. Failure to apply the penalty in this instance means that a responsible party will never face any consequence for disregarding Conservation's rules while falsely claiming compliance with them. BP's refusal to submit both its current plan **and** a compliant plan is the reason that Conservation will not be able to consider BP's options for evaluation and remediation—BP has unilaterally determined that it would neither provide a compliant plan for Conservation to review, regardless of the express mandate to do so, nor request an exception to 29-B.

**V. Conclusion.**

BP's submittal does not include a plan that brings the property into compliance with 29-B, fails to include a separate plan that is in compliance, and does not show that the exception it seeks does "not endanger USDW's." BP told Conservation that its plan would remediate the property to 29-B standards without exception. But BP knew that its plan would not remediate the property to compliance with Statewide Order 29-B, exclusive of section 319. Finally, BP's Plan neither requests an exception nor articulates any cause for an exception to 29-B. Sweet Lake prays for all general and equitable relief and requests that Conservation sanction BP by preventing its Plan from being advertised or heard, excluding its evidence, and denying it an exception to 29-B pollution standards.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY, that a copy of the forgoing document has been forwarded to all known counsel of record by electronic mail or placing same in the United States mail, properly addressed, and postage prepaid.

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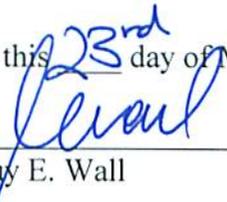
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On Behalf of the Honorable Richard  
P. Ieyoub, Commissioner of  
Conservation

New Orleans, Louisiana, this <sup>23<sup>rd</sup></sup> day of March, 2016.

  
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Guy E. Wall

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**ORDER**

Based on the pleadings, evidence, and arguments introduced, IT IS HEREBY ORDERED that (a) the December 10, 2015 "Proposed Remediation Plan," filed by BP Products North America, Inc., BP Exploration & Oil, Inc., BP Exploration, Inc., and Sohio Petroleum Company, is hereby stricken from the record of these proceedings, and will not be heard nor advertised; (b) BP will be prevented from presenting evidence at the hearing before Conservation; (c) BP will be denied any exception to Statewide Order 29-B pollution regulations; and (d) any and all general and equitable relief.

Signed this \_\_\_ day of \_\_\_\_\_, 2016, Baton Rouge, Louisiana.

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William Iturralde, Hearing Officer