

A New Role for Office of Conservation – Oilfield Legacy Lawsuit Hearings

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This is the first of several updates that the McGlinchey Stafford law firm will generate concerning a new genre of hearings held before the Office of Conservation, Department of Natural Resources (DNR). These hearings will review and approve plans to address remediation mandated in oilfield legacy lawsuits.

The infamous Louisiana Supreme Court 2002 *Corbello* decision, held that, in a claim for breach of a contractual obligation to restore property damaged by oilfield operations, the damages need not be tethered to the value of the property. *Corbello* also ruled that a landowner who collected such damages was not obligated to actually remediate the damages on which the landowner's recovery was based.

During its 2006 Regular Session, Louisiana Legislature enacted Act 312 to reform the procedure for recovering environmental damages arising from oilfield operations. Act 312 provides that funds awarded in a lawsuit for environmental damage must actually be used to cleanup the property and requires the Office of Conservation to conduct hearings to develop the most feasible plan for evaluation and remediation of the environmental damage. Under Act 312, the trial court and Office of Conservation each have defined roles to oversee implementation of the remediation plan. The first "Act 312" Office of Conservation hearing is now underway to develop the remediation plan to address contamination found by the jury verdict rendered in the *Tensas Papadoc* case in Concordia Parish, Louisiana.

The Office of Conservation is hearing testimony and considering evidence to formulate the most feasible plan to remediate the property that will be protective of health and the environment. Such hearings now are mandated in all cases in which a party has been found responsible for contamination at an oilfield site. The hearing officer will accept evidence, rule on objections and procedural matters and ensures that the hearing is conducted with decorum.

Once the Office of Conservation hearing is complete, the hearing officer has sixty (60) days in which to formulate a written remediation plan. The officer can accept one of the plans submitted by the parties, or he can pick and choose elements from the different plans and formulate his own plan for remediation. The final plan goes back to the court with jurisdiction over the lawsuit and the court will accept the plan developed at the Office of Conservation hearing, unless the court determines, by a preponderance of the evidence, that another plan is more feasible. It remains to be seen whether witnesses and exhibits will be allowed at the "renewed" trial, or whether the court will only consider argument on the feasibility of hearing officer's plan.

For more information, contact a McGlinchey Stafford environmental law attorney.