

# Alert: Louisiana Supreme Court limits landowners' rights to recover for historical oil and gas contamination

November 14, 2011

There has been an important new court decision addressing landowners' rights to recover for historical contamination arising out of oil field related activities. The Louisiana Supreme Court, in a 4 to 3 decision, ruled that landowners have no general right to recover for damage for property allegedly contaminated prior to the time that they acquired ownership.

*Is a property owner entitled to sue a third party for non-apparent property damage to the property before the date the owner acquired the property in the absence of an assignment or subrogation to that right?* This issue was squarely presented to the Louisiana Supreme Court in *Eagle Pipe and Supply, Inc. v. Amerada Hess Corporation, et al.* In its October 25, 2011 decision, the Supreme Court found that the landowner has no right to assert such a claim.

Eagle Pipe filed suit against a number of defendants, including ten oil companies and eight trucking companies, alleging that the defendants were responsible for contamination of property owned by Eagle Pipe. All of the contamination had taken place long before Eagle Pipe purchased the property. The defendants filed exceptions, claiming that the right of action to file suit for any contamination belonged to the owners of the property at the time the contamination occurred. The court relied on the subsequent purchaser rule to prevent a purchaser of property from recovering for third party damage inflicted prior to the sale of the property. The court ruled that such a right of action was a personal right of the property owners and did not automatically transfer to the purchaser. A subsequent purchaser could assert that claim only if the claim had been assigned or subrogated to the new owner.

Justice Weimer wrote a strong dissent in which he took the position that the subsequent purchaser rule should be limited to those situations in which damage to the property is obvious, such that the damage would have been a factor in determining the price of the property. Judge Weimer found nothing in the rationale supporting the subsequent purchaser doctrine that supports its extension to hidden or latent defects.

For more information, please contact a member of McGlinchey Stafford's Environmental Law Team.