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Provisions of Newly Promulgated Act 312 Relating to Oil Field Legacy Sites

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The Louisiana Legislature recently enacted sweeping changes to the substantive and procedural law concerning lawsuits involving potential environmental damage to oilfield sites, often referred to as "legacy" cases. This legislation was signed by Governor Blanco and became effective on June 8, 2006 as Act 312 of the 2006 legislative regular session (the "Act"). The Act was passed in response to the deluge of lawsuits filed throughout Louisiana in which landowners have sought monetary compensation for environmental damage caused by allegedly negligent oil and gas exploration and production activities on their property. Prior to the passage of the Act, any such compensation received by the landowner was not required to be used to remediate the environmental damage which may have been present. The Act is designed to require that any monetary damages awarded in these lawsuits are actually used for remediation of the property, rather than simply paying damages directly to a plaintiff-landowner.

This review is meant to provide a basic summary of the provisions of the Act, and is not intended to be a comprehensive study of such provisions. Additionally, it is not intended to provide legal advice regarding the application of the Act to any particular facts and circumstances. However, we would be happy to assist with any particular questions that you might have regarding its function. The Act is new and has not been interpreted by the courts or any relevant state agencies. As might be expected, there is not a provision addressing every possible eventuality, and some of the provisions are less than totally clear. Therefore, what follows is our interpretation of the intended reach of the Act.

Initially, the Act provides that it applies to "any litigation or pleading making a judicial demand arising from or alleging environmental damage." While this provision appears to be exceptionally broad on its face, the Act does include a restricted definition for "environmental damage," limiting it to "contamination resulting from activities associated with oilfield sites or exploration and production sites." Further, the Act defines an "oilfield site" as "any location or any portion thereof on which oil or gas exploration, development, or production activities have occurred." These activities include, among others, drilling, workover, production, primary separation, and disposal, transportation or storage of E&P waste.

The Act also provides a procedural guideline by which its provisions will be carried out. First, the Act requires that a party filing or amending a claim for oilfield damage provide notice to the State through the Louisiana Department of Natural Resources ("DNR") and the Louisiana attorney general's office (the "AG"). The Act states that the lawsuit shall be stayed until thirty days after such notice is given and return receipt of the notice filed with the court. DNR and the AG have the right to intervene in the action or to file an independent civil or administrative action. After the thirty-day stay period expires, the Act appears to contemplate that the lawsuit can proceed even if DNR and the AG decide not to intervene.

If the lawsuit results in an admission or finding of liability for environmental damage, the liable party or parties must submit to the court and DNR a plan for "evaluation or remediation," including an estimated cost of implementation. The Act states that "evaluation or remediation" includes, but is not limited to, "investigation, testing, monitoring, containment, prevention, or abatement." DNR must submit its costs for review of this plan, which the liable party or parties would then deposit into the court registry. The plaintiff, or any other party, has 30 days from the date of submission to review and comment on the plan, or to submit a plan of its own. Within 60 days of the last day for submission of a plan, DNR must hold a public hearing, and within 60 days of the close of that hearing, DNR must determine the most "feasible" plan (based on protection of the environment, public health, safety, and welfare), issuing written reasons for its choice. The court must then adopt the plan recommended by DNR, unless a party can prove by a preponderance of the evidence that another plan is more feasible. While DNR's approval of a plan does not constitute a final judgment, the court's adoption of the plan does.

The liable party or parties must deposit the estimated costs of implementation of the plan into an interest-bearing account in the court registry. All funds, including interest, are to be expended consistent with the plan, and the court may request additional funds if necessary, with excess funds to be returned to the depositor. The court alone retains jurisdiction over the funds and the liable party or parties until completion of the remediation; however, both the court and DNR retain oversight to ensure compliance with the plan, and the liable party or parties must file periodic progress reports as the court or department may require. Upon posting bond, the liable party or parties may appeal the judgment and/or pay the costs in increments.

The liable party or parties also must reimburse the costs of any parties, including the landowner, DNR and the AG, for "providing evidence" upon which a judgment is based relating directly to the establishment of environmental damage, including evaluation, investigation, testing, plan-development, and attorney fees.

The Act also implements procedures regarding court supervision of monetary settlements. If the litigants reach a settlement regarding the alleged environmental damage, such settlement must be approved by the court, and DNR and the AG must be given notice of and 30 days to comment on any settlement. After a contradictory hearing, if the court determines that remediation is necessary, no settlement will be approved until sufficient funds have been deposited into the court registry. The court has discretion to waive these requirements in the event of a minimal, partial settlement, and DNR and the AG, as intervenors, can recoup their costs from the settling parties.

Notably, while the Act does not create any cause of action, or additional obligation under a mineral lease, it does not preclude a landowner from seeking or receiving a judicial award for private claims suffered as a result of environmental damage. These claims might include loss of use of the property or loss in value of the property based on the damage. A landowner may also seek damages for or implementation of additional remediation beyond those of the plan, in accordance with express contractual provisions. These awards would not be placed in the court registry but would be paid directly to the landowner.

The Act also requires that any owner or operator of an oil field site or E & P site who conducts environmental testing on the site must provide results to DNR within ten days of receipt. If such owner or operator performs tests on the land of another, results must be provided to the other landowner within ten days of receipt.

The Act removes claims for environmental damage to groundwater from the provenance of DNR, such claims to be examined only by the Department of Environmental Quality under Louisiana Revised Statute § 30:2015.1. In all other respects, the current law relating to remediation of environmental groundwater damage remains unchanged but shall no longer apply to oilfield and E & P sites.

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