

148

CITATION

IN THE MATTER OF:
(Plaintiff)

vs.

NUMBER C584482 SECTION 26

19th JUDICIAL DISTRICT COURT

GENERAL PERMIT FOR DISCHARGES
FROM OIL & GAS EXPLORATION, &
PRODUCTION FACILITIES, PERMIT
NUMBER: LAG260000
(Defendant)

PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

RECEIVED
DEC 11 2009
E.B.R. SHERIFF'S OFFICE

TO: DR. HAROLD LEGGET, SECRETARY
LOUISIANA DEPARTMENT OF ENVIROMENTAL QUALITY
602 N. FIFTH STREET, GALVEZ BUILDING
BATON ROUGE, LA 70802

GREETINGS:

Attached to this citation is a certified copy of the petition*. The petition tells you what you are being sued for.

You must EITHER do what the petition asks OR, within fifteen (15) days after you have received these documents, you must file an answer or other legal pleading in the office of the Clerk of Court at the Governmental Building, 222 St. Louis Street, Baton Rouge, Louisiana. If you do not do what the petition asks, or if you do not file an answer or legal pleading within fifteen (15) days, a judgment may be rendered against you without further notice.

This citation was issued by the Clerk of Court for East Baton Rouge Parish on 11-DEC-2009.

Benita Gray
BENITA GRAY Deputy Clerk of Court for
Daug Welborn, Clerk of Court

Requesting Attorney: JOANNE M RYAN

*The following documents are attached:
PETITION FOR JUDICIAL REVIEW

SERVICE INFORMATION:

Received on the _____ day of _____, 20____ and on the _____ day of _____, 20____, served on the above named party as follows:

PERSONAL SERVICE: On the party herein named at _____.

DOMICILIARY SERVICE: On the within named _____, by leaving the same at his domicile in this parish in the hands of _____, a person of suitable age and discretion residing in the said domicile at _____.

SECRETARY OF STATE: By tendering same to the within named, by handing same to _____.

DUE AND DILIGENT: After diligent search and inquiry, was unable to find the within named _____ or his domicile, or anyone legally authorized to represent him.

RETURNED: Parish of _____, this _____ day of _____, 20____.

SERVICE: \$ _____
MILEAGE \$ _____
TOTAL: \$ _____

Deputy Sheriff
Parish of East Baton Rouge

SERVICE RECEIVED
DEC 16 2009
LA. DEPT. OF ENV. QUALITY
LEGAL AFFAIRS DIVISION
BY: *[Signature]*

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

IN THE MATTER OF:

GENERAL PERMIT FOR
DISCHARGES FROM OIL & GAS
EXPLORATION, DEVELOPMENT, &
PRODUCTION FACILITIES, PERMIT
NUMBER: LAG260000

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Sec 26

PETITION FOR JUDICIAL REVIEW

1. This is an appeal by the Louisiana Environmental Action Network (“LEAN”) of a Louisiana Department of Environmental Quality (“LDEQ”) permit decision dated October 14, 2009. Specifically, it is an appeal of the LDEQ’s General Permit for oil and gas exploration, development, and production facilities, AI No. 123766, Permit No. LAG260000, Activity No. PER20050001 (the “General Permit”). Among other things, the General Permit allows oil and gas producers to dispose of radioactive waste into Louisiana’s territorial waters and associated sediments, risking the health and welfare of Louisiana residents and the economic health of Louisiana’s seafood industry. For example, the General Permit allows discharge of radium-226 and radium-228 without *any* limitation on concentration or the resulting dose to members of the public and without regard for compliance with other health and safety requirements, including LDEQ’s radiation regulations, La. Admin. Code, tit. 33, pt. XV.

PARTIES

2. LEAN is a person aggrieved by LDEQ’s final decision in this matter.
3. LEAN is a nonprofit corporation whose purpose is to preserve and protect Louisiana’s land, air, water, and other natural resources, and to protect LEAN members and other Louisiana residents from threats of pollution.
4. LEAN’s members who live, work, own property and recreate in the state, including members whose economic livelihoods depend on the seafood industry, are at risk of concrete and direct harm to their health and welfare from the General Permit.
5. LDEQ is an agency of the State of Louisiana with the power to sue and be sued.

JURISDICTION AND VENUE

6. Jurisdiction and venue are proper in this Court pursuant to La. Rev. Stat. § 30:2050.21.A.

GENERAL ALLEGATIONS

7. On or about December 11, 2008, LDEQ issued a public notice on the proposed General Permit. The public notice established a public comment period. LDEQ extended the public comment period to March 9, 2009.

8. LEAN submitted timely comments, opposing issuance of the General Permit.

9. The General Permit allows offshore oil and gas exploration, development, and production facilities to discharge, among other things, produced water (including outer continental shelf produced waters); deck drainage; well treatment, completion, and workover fluids; treated sanitary waste; domestic waste; hydrostatic test wastewater; and other miscellaneous discharges from oil and gas exploration, into Louisiana's territorial seas.

10. Produced waters from oil and gas exploration, development, and production facilities often contain radioactive materials, known as Naturally Occurring Radioactive Material (or NORM). Although these radioactive materials occur naturally, oil and gas production activities bring them to the surface and discharge them to the environment, creating a risk of human exposure to excessive amounts of radiation.

11. The U.S. Geological Service ("USGS") has noted the occurrence of elevated levels of radioactivity at oil and gas sites. USGS noted that "Most of the sites with markedly higher radioactivity were concentrated in specific geographical areas, such as the Gulf Coast" USGS, Naturally Occurring Radioactive Materials (NORM) in Produced Water and Oil-Field Equipment—An Issue for the Energy Industry (<http://pubs.usgs.gov/fs/fs-0142-99/fs-0142-99.pdf>).

12. NORM from oil and gas field produced water often includes scale. USGS has explained: "Oil-field equipment can contain radioactive scale and scale-bearing sludge, both of which form as coatings or sediments. The scale precipitates from produced water in response to changes in temperature, pressure, and salinity as the water is brought to the surface and is processed to separate coexisting crude oil. The scale is

typically a mixture of carbonate and sulfate minerals. One of these sulfate minerals is barite (barium sulfate), which is known to readily incorporate radium (Ra) in its structure.” USGS, Naturally Occurring Radioactive Materials (NORM) in Produced Water and Oil-Field Equipment—An Issue for the Energy Industry (<http://pubs.usgs.gov/fs/fs-0142-99/fs-0142-99.pdf>).

13. Radioactive scale released from offshore oil and gas field pipes accumulates in marine sediments and can contaminate seafood.

14. Radioactive materials from NORM discharged under the General Permit can bio-accumulate and enter the food chain, creating health impacts.

15. LDEQ issued the General Permit without adequate analysis of the cumulative impacts of discharges and accumulation of radioactive materials in Louisiana’s territorial waters and sediments, including—without limitation—longer-term impacts to public health and welfare and to Louisiana’s seafood industry.

16. The General Permit authorizes discharge of radioactive materials without regard for binding health and safety regulations and laws, including without limitation the limitations and compliance assurance measures of La. Admin. Code, tit. 33, pt. XV, §§ 421, 422, 430, 499, app. B, tbl. II. These provisions are applicable pursuant to, *inter alia*, La. Admin. Code, tit. 33, pt. XV, §§ 322(F).

ASSIGNMENTS OF ERROR

17. LDEQ’s failure to fully consider environmental impacts from discharges pursuant to the General Permit violates the agency’s duty as public trustee under Article IX, Section 1 of the Louisiana Constitution (hereinafter “LDEQ’s duty as public trustee”).

18. LDEQ’s failure to ensure the minimization or avoidance, as much as possible consistent with the public welfare, of adverse environmental impacts from discharges pursuant to the General Permit violates LDEQ’s duty as public trustee.

19. LDEQ’s failure to ensure that the General Permit’s economic benefits will outweigh the permit’s risk to public health and welfare and to the seafood industry violates LDEQ’s duty as public trustee.

20. LDEQ’s failure to “to make basic findings supported by evidence and ultimate findings which flow rationally from the basic findings” and to “articulate a rational connection between the facts found and the order issued” violates LDEQ’s duty

as public trustee. See Save Ourselves, Inc. v. La. Env'tl. Control Comm'n, 452 So. 2d 1152, 1159 (La. 1984).

21. LDEQ's failure to set radium limits in the General Permit and to require proper monitoring of radium discharges violates LDEQ's duty as public trustee.

22. LDEQ's General Permit for radionuclide discharges without regard to other applicable health and safety requirements, including without limitation LDEQ's radiation regulations, was arbitrary and capricious.

23. LDEQ's issuance of the General Permit violates constitutional, statutory, and regulatory provisions, is made in excess of statutory authority, was made upon unlawful procedure, is affected by error of law, is arbitrary and capricious, and is not supported and sustainable by a preponderance of evidence. La. Rev. Stat. § 49:964(G) (incorporated by La. Rev. Stat. § 30:2050.21(F)).

DESIGNATION OF RECORD FOR APPEAL


24. Petitioners designate the following as the record on appeal in this matter: the entire public record regarding the General Permit that exists as of the date of the filing of this Petition, including but not limited to the application materials, the permit, the basis of decision, all public comments, and LDEQ's responses to public comments.

PRAYER FOR RELIEF

WHEREFORE, Petitioner LEAN respectfully requests that this Court:

- a. Vacate the General Permit and remand the matter to LDEQ;
- b. Stay the effectiveness of the General Permit pending final resolution of this appeal; and
- c. Award all other relief the Court finds proper.

Respectfully submitted this 12th day of November, 2009,



Joanne M. Ryan, No. 32234
Smith Stag, LLC
365 Canal Street, Suite 2850
New Orleans, Louisiana 70130
Phone: (504)-593-9600
Counsel for Petitioner

Please Serve:

Dr. Harold Leggett, Secretary
Louisiana Department of Environmental Quality
602 N. Fifth Street, Galvez Building
Baton Rouge, Louisiana 70802

FILED 11/30/09
Signed S/ Denise Beaud
A. J. G. Corp. 12-11-09
Denise Beaud

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

IN THE MATTER OF: *
*
GENERAL PERMIT FOR *
DISCHARGES FROM OIL & GAS *
EXPLORATION, DEVELOPMENT, & *
PRODUCTION FACILITIES, PERMIT *
NUMBER: LAG260000 *

ORDER

The Court has received the Petition for Judicial Review appealing the Louisiana Department of Environmental Quality's General Permit for oil and gas exploration, development, and production facilities, Permit No. LAG260000, which Petitioner LEAN filed on November 12, 2009.

The record designated by the Petitioners shall be compiled and forwarded to the Nineteenth Judicial District Court, and the appeal shall be returnable to the 19th Judicial Court on or before the in accordance with law.

Additionally, the Court stays the effectiveness of the General Permit that is the subject of this appeal pending final resolution of this appeal. *stay denied appeal granted*

Baton Rouge, Louisiana, this 30th day of November, 2009.

Kay Bates

DISTRICT JUDGE
NINETEENTH JUDICIAL DISTRICT COURT

FILED 11-13-09

Signed *s/ Denise Beaud*

A. W. C. 12-1-09

Denise Beaud
By Clerk