

## ENVIRONMENTAL NOTES

## IS ACT 312 APPLICABLE TO MY OPERATION?

In 2006, the Louisiana Legislature enacted Louisiana Revised Statute 30:29 ("Act 312") to provide a procedure for judicial resolution of claims for environmental damage to property. The provisions of Act 312 are applicable whenever there is "any litigation or pleading making a judicial demand arising from or alleging environmental damage" involving "contamination resulting from activities associated with oilfield sites or exploration and production ("E&P") sites," regardless of whether claims for remediation arise under the Louisiana Mineral Code or Civil Code. La. R.S. 30:29(I)(1).

Though the constitutionality of Act 312 was upheld by the Louisiana Supreme Court in *M.J. Farms, Ltd. V. Exxon Mobil Corp.*, 07-2371 (La. 2008), 998 So.2d 16, there may be some uncertainty as to which types of oil and gas activities fall under the purview of Act 312. Specifically, under Act 312, environmental damage is defined as any actual or potential impact, damage, or injury to environmental media caused by contamination resulting from activities associated with oilfield sites or exploration and production sites. This includes, but is not limited to, impact or injury to soil, sediment, surface water or ground water.

Act 312 defines an oilfield/E&P site as a location on which oil or gas exploration,

development, or production "activities" have occurred. Such activities would include the use of wells, equipment, tanks, flowlines or impoundments in the drilling, workover, production, primary separation, disposal, transportation or storage of E&P wastes, crude oil and natural gas prior to a custody transfer or sales point.

Using generally accepted oil and gas terminology, activities occurring in the "upstream" oil and gas sector are within the procedures set forth in Act 312, while activities taking place in the "midstream" and "downstream" sectors would likely not meet the criteria set forth in Act 312. It appears that the Louisiana legislature intended Act 312 to apply only to contamination resulting from activities that occur during search for and recovery of oil, gas and minerals from the earth, and not the processing, transportation, storage, or refining of oil, natural gas and related products.



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