

OILFIELD POLLUTION LITIGATION UPDATE

Writ applications have been filed with the Louisiana Supreme Court in two oilfield pollution cases that have the potential to dramatically impact the scope of the numerous legacy lawsuits currently pending throughout the state.

In the case of *Dore Energy Corporation v. Carter-Langham, Inc. et al.*, 2005-C-1582, on application for writ of certiorari from the Louisiana Third Circuit Court of Appeal, 2004-CA-1373 (La. App. 3rd Cir. 5/4/05), on appeal from the 38th Judicial Court, Cameron Parish, both the plaintiff and defendants have filed for writs as a result of the decision of the Louisiana Third Circuit Court of Appeal as to the issue of when does a mineral lessee's duty to restore the leased premises arise. In this case, the Third Circuit in part overruled a trial court ruling granting defendants' exception of prematurity which barred plaintiff from proceeding with its claims for restoration damages for property subject to a mineral lease still in effect. The *Dore Energy* case is one of five consolidated cases in which writs have been sought on this same issue

In the case of *Joseph Grefer, et al. v. Alpha Technical, et al.*, 2005-C-1590 and 2005-C-1259, on application for writ of certiorari from the Louisiana Fourth Circuit Court of Appeal, 2002-CA-1237 (La. App. 4th Cir. 3/31/05), on appeal from the Civil District Court, Orleans Parish, both plaintiffs and defendants have filed for writs as a result of the decision of the Louisiana Fourth Circuit Court of Appeal as to the amount of punitive damages appropriate in this matter. In addition, defendants have also sought writs on the

issue of the applicability of the Louisiana Department of Environmental Quality (LDEQ) standards for the remediation of property impacted by Naturally Occurring Radioactive Materials (NORM) and whether compliance with said standards is deemed to be a "reasonable" restoration under Louisiana law. In this case, the Fourth Circuit held that it was not error for the trial court to refuse to instruct the jury as to the applicable LDEQ standards for the remediation of NORM-contaminated property.

Defendants' writ application in *Grefer* is supported by amicus briefs filed by the Louisiana Department of Economic Development and Louisiana Department of Environmental Quality, the Louisiana Association of Business and Industry, the Louisiana Mid-Continent Oil and Gas Association, and the Louisiana Chemical Association. (Kean Miller filed the amicus curiae brief in this case on behalf of the Louisiana Chemical Association.)

In both of these matters, the Louisiana Supreme Court has before it cases that will potentially allow the court to revisit its prior decisions in the *Roman Catholic Church* and *Corbello* cases that have been the basis for many of these oilfield legacy cases. To date, the Louisiana Supreme Court has not issued its decision as to whether to grant writs in either of these cases.

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EPA AND LDEQ TEST FLY THE HAWK INFRARED LEAK-DETECTION CAMERA

In an Open House held by the Louisiana Department of Environmental Quality (“LDEQ”) on July 12, 2005, LDEQ officials commented on the results of their initial test of a specialized leak-detection camera commonly called the HAWK. The HAWK camera uses infrared gas imaging to detect chemical leaks that are often not detectable by the human eye to detect chemical leaks from a variety of sources, including releases from tanks, pipelines, barges, rail cars and other operations.

In the first survey conducted during the week of June 20, 2005, a helicopter equipped with the HAWK camera flew over numerous industrial sites located in and around the Baton Rouge area for a two-day period. The helicopter was flown at low speeds and at low levels around those sites. Officials from the LDEQ and the U.S. Environmental Protection Agency (“EPA”) were present on the helicopter during the test run while other members of the LDEQ staff were placed on land and waterways to conduct follow-up investigations in areas where leaks were detected.

According to an LDEQ official, almost all facilities surveyed during the two-day period were found

to be “leakers”- meaning the facility emitted fugitive emissions in amounts detectable by the HAWK camera. Notably, some of the emissions by facilities designated as “leakers” were, in fact, allowed by permit. However, according to the LDEQ, other “leakers” examined by ground crews were found to have emissions that were not permitted.

The LDEQ may purchase a leak-detection camera and begin using the camera during routine inspections of industrial facilities and during emergency response events. The LDEQ noted in its press release that it intended to use the HAWK to combat the current ozone attainment issue and particularly to identify 1,3-butadiene, propylene, and benzene. The HAWK camera may also result in increased compliance actions and penalty assessments for businesses found to be emitting substances which potentially exceed permitted levels.

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