

ENVIRONMENTAL NOTES

January/February 2002

Traditional Non-Hazardous Oil Field Waste Could Be the Subject of Punitive Damages. In a recent ruling, the Louisiana Third Circuit Court of Appeal (whose district includes much of Southwestern Louisiana) concluded saltwater generated from oil and gas activities, as well as “petroleum,” may be considered a “hazardous” substance for purposes of awarding punitive damages under Louisiana Civil Code article 2315.3. Article 2315.3, which was repealed in 1996, allowed for punitive damages for injuries caused by the wanton or reckless disregard of public safety in the storage, handling, or transportation of hazardous toxic substances.

The case at issue involved a surface lease granted by a landowner to Shell Oil Company (“Shell”). Plaintiffs, heirs of the landowner, claimed in part that Shell breached the lease agreement by disposing saltwater from oil production on the property. The trial court determined that Shell’s activities on the leased premises did not subject them to exemplary damages under Article 2315.3. Plaintiffs appealed.

Shell argued that because the Louisiana legislature specifically exempted petroleum from being considered a “hazardous substance” under Louisiana’s “Superfund” statute, petroleum likewise should be exempt under Article 2315.3. The Third Circuit rejected the argument, relying on two other appellate court decisions finding that natural gas was not exempt from the reach of the punitive damages statute. Interestingly, the Third Circuit refused to follow the Louisiana Supreme Court decision in a 1999 case holding that “petroleum lubricating oil” was not considered a toxic and hazardous substance under Article 2315.3.

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DEQ Developments. Bliss Higgins, the Assistant Secretary of the Office of Environmental Services, resigned her appointed position with DEQ effective January 14, 2001. She will be taking accumulated leave, but may return to her civil service position in the environmental permitting group at DEQ. Bliss is widely recognized as having tremendous knowledge and competence in the field of air permits and regulations. Bliss was instrumental in developing the Louisiana toxic air pollutant program, one of the few state programs in the nation that regulates such emissions. Bliss also took the lead in developing the state’s Title V operating permit program. She also has held several leadership positions with STAPPA/ALAPCO. We wish Bliss all the best in whatever future endeavors she chooses to pursue.

Secretary Dale Givens has appointed Linda Levy, formerly Assistant Secretary for Environmental Compliance, into the position of Assistant Secretary of Environmental Services. He has also appointed R. Bruce Hammatt as Assistant Secretary for Environmental Compliance. Both Linda and Bruce are long time DEQ employees who will bring a great deal of experience to their roles.

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Insignificant Activities List. The Louisiana Department of Environmental Quality (“LDEQ”) recently proposed a revision to the Insignificant Activities List set forth in LAC 33:III.501.B.5. The proposed rule (AQ222) seeks to add ten insignificant activities to the Insignificant Activities List to further simplify and

streamline the permitting process concerning small air emissions. The proposed rule should benefit the regulated community and the LDEQ by reducing the number of temporary variance requests and/or permit modifications for activities that result in insignificant and de minimis emissions. LCA supported the proposed revisions as beneficial both to the regulated community and the LDEQ.

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// Web Watch \\ by Megan E. Lapari

<http://www.4cleanair.org/members/home.html>

STAPPA/ALAPCO. The State and Territorial Air Pollution Program and the Association of Local Air Pollution Control Officials represent air pollution control agencies across the United States. Their website is a useful starting point for access to information on state and local air pollution control agencies as well as a research tool for all aspects of air pollution control.

<http://www.gsi-net.com/RBCAPOL/stselect.htm>

RBCA State Policy Issue Database. A guide to Risk-Based Corrective Action programs in 33 participating states. This website allows visitors to compare key policy issues between state programs and to review site assessment and classification methods as well as remedial action options used by each state.



LAGNIAPPE

(Cajun French for “a little something extra”)



Leonard L. Kilgore III has been selected as a Fellow of the Louisiana Bar Foundation and as a member of the Chancellor’s Council of the LSU Paul M. Hebert Law Center.

Maureen N. Harbourt was a speaker at the Air and Waste Management Association’s Fall Seminar on Air Compliance issues and spoke on Ethics at the Southwest Louisiana Bar Association’s November meeting.

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