



LANDOWNER NOT LIABLE UNDER OPA 90 FOR ABANDONED OILFIELD EQUIPMENT

The United States Department of Justice, in a case of first impression, attempted to hold a landowner responsible for the Coast Guard's response costs in the clean up of abandoned oilfield equipment in *United States of America v. Louisiana Land & Exploration Company*, USDC, Eastern District of Louisiana, No. 03-3208, Section "L". Defendant LL&E was the surface owner of the property, which it purchased subject to an existing mineral lease. The lessee had engaged in operations for several years and had installed wells, tanks and other drilling and exploration equipment on the property. Although the operator allegedly ceased operations, LL&E never received any notification that the lease was being terminated.

In 2001, the US Coast Guard reported an oil spill from a storage tank on the property. Because the property allegedly was located in marshlands adjacent to a bayou which drained into the Gulf of Mexico, the US Coast Guard initiated clean up pursuant to the Oil Spill Pollution Act of 1990 ("OPA 90"). Upon completion, it sought to recover response costs of approximately \$800,000 from the landowner under the theory that the operator had abandoned its equipment and that, pursuant to OPA 90 and La. C.C. art. 493, LL&E became the owner of this equipment when the lease "terminated" and was therefore responsible for all damage it caused.

LL&E sought summary judgment on the grounds that as a mere surface owner, it did not meet the definition of an "owner or operator" of an abandoned facility under OPA 90. (Unlike CERCLA, the land itself is not deemed to be part of the facility in OPA 90). Further, it argued that La. C.C. art. 493 had been amended retroactively so as to require that the landowner take certain affirmative steps to obtain possession of improvements on its land upon termination of the lease relationship; since these steps were not taken and since there was no formal termination of the lease, the requirements of art. 493 had not been met. Alternatively, LL&E averred that even the pre-amendment requirements of art. 493 had not been met, because the lease relationship had not been terminated and LL&E had not provided written demand to the owner to remove the improvements. The U.S. filed a cross motion for summary judgment seeking a determination that LL&E was liable for response costs.

Judge Eldon E. Fallon granted LL&E's Motion for Summary Judgment and denied the motion filed by the U.S. In a narrowly-tailored opinion, the Court held that the landowner never became the owner of the structures and equipment as required for liability under OPA 90, because the requirements for change of ownership under art. 493 were not met.

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This ruling is significant insofar as the US' attempt to find a landowner responsible for damages caused by abandoned oilfield equipment that it never controlled was unsuccessful. Had the Court found otherwise, the ramifications for Louisiana landowners with mineral leases on their property could have been quite onerous. Because the Court did not specifically rule on whether a landowner can ever be held responsible in such circumstances, its holding is limited to the facts. However, it is helpful in that it establishes that Louisiana law will be used to determine whether a change of ownership of improvements occurred sufficient to trigger responsibility in a landowner under OPA 90.

Louisiana Supreme Court denies Writs in Oilfield Pollution Cases

Following up on a report in our Fall 2005 edition of the *Environmental Notes*, writ applications were denied by the Louisiana Supreme Court in the two oilfield pollution cases (*Dore Energy* and *Grefer*) mentioned in that article. In both instances, the Louisiana Supreme Court had before it cases that would 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 the oilfield legacy cases. In the *Grefer* case, the court's writ denial also allowed the \$112 million punitive damage award in that case to stand.

With the denial of writs in these two cases, the Louisiana Supreme Court has effectively passed the issue "oilfield legacy litigation reform" on to the Louisiana Legislature where several bills are pending of this session. We will report back on any substantive developments from the Legislature in future editions of the *Environmental Notes*.

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