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Oil, Gas and Pipeline Defendants Are Obligated to Fix What They Broke

At the foundation of the Southeast Louisiana Flood Protection Authority-East (SLFPA-E) lawsuit against 97 oil companies are multiple bases, including scores of permits triggering obligations on the part of the companies to repair the damage caused by their operations.

In obtaining these permits the oil, gas and pipeline companies agreed to comply with state and federal regulations, including regulations obligating them "*to prevent bank slumping and erosion, and saltwater intrusion*," *"to maintain natural water flow regimes," "to minimize adverse environmental impacts," to clear, revegetate, detoxify, and otherwise restore affected sites "as near as practicable to their original condition upon termination of operations to the maximum extent practicable,"* and to *"backfill[ ] or otherwise restore[ ] to the pre-existing conditions upon cessation of use for navigation purposes to the maximum extent practicable*." These requirements are taken from sections 705i, 705j, 705n, 719d, 719j and 719m respectively of Title 43 of the Louisiana Administrative Code.

"We are not trying to force these companies to abide by some new set of rules," said Stephen Estopinal, treasurer of SLFPA-E Board of Commissioners. "We are only asking that they abide by the terms of the permits and the regulations they agreed to when they were given permission to exploit our natural resources."

"Because the industry has failed to adhere to their permit requirements, SLFPA-E has been and will continue to be forced to support, repair and improve an increasingly complex storm surge risk reduction system," Estopinal said. "The increased threat to the levee system must be addressed either by remedial work where the damage was done or improvements to the levee system where the impact is greatest."

The Louisiana Oil and Gas Association (LOGA) is applying political pressure on state officials in the hope that they will withdraw approval of the SLFPA-E's retention of its counsel. In so doing, industry officials are sidestepping discussion of their responsibilities under the permits issued to them and the regulations governing those permits.

There is no doubt that the work of these companies has weakened our natural hurricane and flood defenses. As Bob Bea, a former chief offshore engineer with Shell Oil Co. and the head of the National Science Foundation study team that investigated the Katrina disaster, noted in July, 2006 affidavit on behalf of the state of Louisiana, "There is clear evidence that

past and current oil and gas activities have made and continue to make substantial contributions to degradations in the natural defenses against hurricane surges and waves in coastal Louisiana. In several important cases, it was the loss of these natural defenses that contributed to the unanticipated breaches of flood protection facilities that protected the greater New Orleans area during Hurricane Katrina and led to repeated flooding during Hurricane Rita."

Gov. Bobby Jindal and Coastal Protection and Restoration Authority of Louisiana chair Garret Graves have argued that the federal government, specifically the U.S. Army Corps of Engineers (USACE), should be obligated to clean up the mess the oil companies have made, it is true that the federal government bears considerable responsibility for land loss. However, language in permits issued by the USACE and DNR makes clear that, when it comes to environmental restoration and clean up, oil companies are responsible.

In 1974, the USACE started using a standard permit form that included a list of provisions. Most notably section I(d) of the form stated "*That the permittee agrees to make every reasonable effort to prosecute the construction or work authorized herein in a manner so as to minimize any adverse impact of the construction or work on fish, wildlife and natural environmental values*."

Section I(s) goes on to state, *"That if and when the permittee desires to abandon the activity authorized herein, unless such abandonment is part of a transfer procedure by which the permittee is transferring his interests herein to a third party pursuant to General Condition v hereof, he must restore the area to a condition satisfactory to the District Engineer."*

And, at the top of USACE permits the following language, complete with capital letters, appears just below the words "DEPARTMENT OF THE ARMY" and just above the word "PERMIT."

Note – it is understood that this instrument does not give any property rights either in real estate or material, or any exclusive privileges, and that it does not authorize any injury to private property or invasion of private rights, or any infringement of Federal, State or local laws or regulations, nor does it obviate the necessity State assent to the work authorized. IT MERELY EXPRESSES THE ASSENT OF THE FEDERAL GOVERNMENT SO FAR AS CONCERNS THE PUBLIC RIGHTS OF NAVIGATION.

It is also important to note that the USACE dredging permits generally require the oil companies to *"maintain"* the dredged canals *"in accordance with the drawings "* attached thereto which specified the widths and depths of the dredged canals and the associated spoil banks.

""The obligations in these permits are powerful and they clearly have not been met," said SLFPA-E vice president John Barry. "We are talking about measures required across the board by federal and state authorities aimed at protecting the safety of our citizens and the integrity of

our environment. In all of their public statements since we filed suit, the oil industry and state officials have acted as if these provisions did not exist.

“Our goals really are quite reasonable and limited,” Barry added. “With respect to the permits, we’re only asking the courts to enforce those permits and the regulations governing them.”

“It is time for oil, gas and pipeline companies to clean up their mess and fix our broken coast as they promised to do,” Estopinal said. “The tax payers should not be asked to pay for the damage caused by the oil industry.”

“Given the fact that the defendants agreed to comply with state and federal regulations when they obtained their permits, it would be perhaps the greatest example of corporate welfare in the history of the United States to allow oil to drop the tab required to clean up their mess on Louisiana tax payers,” he said.

"Considering the obvious broken condition of the coastal area south of New Orleans together with the overwhelming number of scientists that have concluded that the oil companies’ operations have contributed to the loss of our coast, it is disappointing that there is no evidence - none - that the oil companies honored their obligations to restore the areas they damaged,” said Gladstone N. Jones, III, the attorney representing SLFPA-E.

“Indeed, today at this very moment, we are losing valuable protective land around industry operations, which critical to flood protection. Today, saltwater is flowing freely into these areas, destroying our first line of defense against flooding - our coastal marsh,” Jones said.

“It is this failure by the oil companies which has driven the SLFPA-E to take affirmative steps to fulfill its mission to protect lives and property in the greater New Orleans and to pursue its pending lawsuit. This is fairly simple,” Jones said. “The oil companies were obligated to minimize damage and restore the coastal lands; they broke those promises; and now, in their own words according to their lobbyists at LOGA, they are applying ‘political pressure’ to make tax payers pick up the tab. That is not right. It also doesn't seem like a policy Gov. Jindal would promote given his consistent history of pushing low to no taxes."