



TULANE LAW SCHOOL

February 27, 2008

Via e-mail to Win.Webb@LA.GOV and U.S. MAIL

Ref: 157-018

State of Louisiana
Department of Environmental Quality
Office of Environmental Services
Post Office Box 4313
Baton Rouge, La. 70821-4313
Attn: Project Manager Winn Webb

Re: Comments on Behalf of Gulf Restoration Network, Louisiana Environmental Action Network and the Lake Pontchartrain Basin Foundation on the Application of Valero St. Charles Refinery for Water Quality Certification to Fill 67 Acres of Cypress Forested Wetlands to Expand its Facility in St. Charles Parish, Permit # WQC WW 080117-05

Dear Mr. Webb:

Please consider the following comments from the Lake Pontchartrain Basin Foundation,¹ Gulf Restoration Network² (GRN), and Louisiana Environmental Action Network³ (LEAN) regarding Valero St. Charles Refinery's ("Valero") request for water quality certification of their proposal to fill in 67.59 acres of cypress forested wetlands in St. Charles Parish in order to build an overflow parking lot, store equipment, and expand its facility.⁴ The Lake Pontchartrain Basin Foundation, GRN, and LEAN reserve the right

¹Lake Pontchartrain Basin Foundation is a non-profit organization consisting of a 14-member board of directors representing the Basin parishes and state regulatory agencies. Through coordination of restoration activities, education, advocacy, monitoring of the regulatory process, and citizen action, the Lake Pontchartrain Basin Foundation works in partnership with all segments of the community to reclaim the waters and habitats of the Basin for this and future generations.

²GRN is a non-profit corporation organized under the laws of the State of Louisiana. GRN, a regional coalition of almost fifty environmental and social justice groups, is committed to the protection and restoration of the resources of the Gulf of Mexico region. GRN staff provides technical assistance and support to communities in the states bordering the Gulf in opposing environmental threats to local water bodies that jeopardizes their communities.

³ LEAN is a non-profit corporation organized under the laws of the State of Louisiana. LEAN serves as an umbrella organization for environmental and citizen groups. LEAN's purpose is to preserve and protect the state's land, air, water, and other natural resources, and to protect its members and other residents of the state from threats of pollution. LEAN has members statewide, including members who live, work, or recreate in St. Charles Parish.

⁴ These comments, in response to the Joint Public Notice dated January 18, 2008, are filed timely per an day extension of the public comment period granted by Robert Tewis in an email to Jill Mastrototaro on February, 20, 2008 (attached as Exhibit A).

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to rely on all comments submitted during the public comment period.

The Louisiana Department of Environmental Quality (“LDEQ”), as public trustee of the environment, must protect the environmental resources vital to the lives of residents and wildlife in the vicinity of the Lake Pontchartrain Basin. The Lake Pontchartrain Basin and the 215,600 acres of cypress forested wetlands within the basin provide essential environmental functions and are a unique and important resource for Louisiana. When companies like Valero fill in cypress forested wetlands, they destroy a critical resource that is already endangered and unlikely to regenerate. Not only are cypress forested wetlands an important part of Louisiana's history and culture, they provide critical protection against flooding and storms. In the aftermath of Hurricanes Katrina and Rita, Louisiana cannot afford to invite manmade destruction of wetlands without seriously examining the environmental impacts of further wetlands loss. If Louisiana loses more wetlands, its coastal areas will be even more susceptible to damage from hurricane winds, storm surges, and flooding, inviting a repeat of the destruction that Hurricanes Katrina and Rita wrought in 2005.

Valero applied for a water quality certification pursuant to La. Rev. Stat. § 30:2047 and § 401 of the Clean Water Act to fill in over 67 acres of cypress forested wetlands to build an overflow parking lot, store equipment, and expand their facility in St. Charles Parish, Louisiana. Despite the potential impact of Valero's wetland fill proposal, LDEQ has neither analyzed the environmental impacts of this project nor provided specific data or evidence regarding Valero's compliance with water quality standards, both of which Louisiana's Constitution requires. *Save Ourselves, Inc. v. La. Env't'l Control Comm'n.*, 452 So. 2d 1152, 1159-60 (La. 1984) (requiring that state agencies evaluate environmental impacts of their decisions). Until LDEQ has met both of these requirements, it may not act on Valero's water quality certification.

BACKGROUND

The 1.7 million acre Lake Pontchartrain Basin is an important natural resource for Louisiana, providing critical functions of wildlife habitat, flood protection, water quality improvement, storm protection, soil stabilization, and recreational benefits. Coastal Wetland Forest Conservation and Use Science Working Group; Conservation, Protection and Utilization of Louisiana's Coastal Wetland Forests, Final Report to the Governor of Louisiana (2005), <http://www.coastalforestswwg.lsu.edu/THEFinalReport.pdf>. (“Governor's Report”). The basin contains 483,390 acres of wetlands, 22% less total wetland area than 1932. The primary causes of loss in the basin are the interrelated effects of human activities and the estuarine process. See <http://lacoast.gov/landchange/basins/po/pontsum.htm>. Valero's proposal to fill the cypress wetlands to create a parking lot, store equipment, and expand its facility will contribute to the overall destruction of wetland area in the Lake Pontchartrain Basin.

The basin's wetlands provide coastal Louisiana with valuable flood protection, water quality improvement, and storm protection. See Governor's Report at ii. In the aftermath of Hurricanes Katrina and Rita, it is more urgent than ever to conserve these

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wetlands. Since the 1930's, Louisiana has lost over 1,900 square miles of land. *See* <http://dnr.louisiana.gov/crm/coastres/coastres.asp>. Between 1990 and 2000, Louisiana lost approximately 24 square miles of wetlands per year. Currently, Louisiana is home to 30% of the total coastal marsh in the lower 48 states but accounts for 90% of total coastal marsh loss. *See id.* According to preliminary estimates by U.S. Geological Survey based on an analysis of satellite data from September and October, Hurricanes Katrina and Rita transformed some 100 square miles of marsh to open water in southeastern Louisiana. *See* <http://www.usgs.gov/newsroom/article.asp?ID=1409>.

The 483,390 acres of wetlands in Lake Pontchartrain Basin contain 215,600 acres of valuable cypress forest wetlands. Cypress forests are one of Louisiana's best natural resources. Not only are the majestic cypress trees integral to Louisiana's culture and tourism economy, but also the Louisiana state tree arguably provides the state's best hurricane protection. *Environmentalists Say Cypress Belongs in Swamps, Not Gardens*, HERALD-TRIBUNE, April 28, 2007 ("Preliminary results show that cypress and tupelo swamps the width of a football field can suck 90 percent of the storm surge out of a hurricane.") available at <http://www.heraldtribune.com/apddps/pbcs.dll/article?AID=/20070428/NEWS/704280458>. Salt water intrusion and changing hydrology, often caused by man-made spoil banks, have left cypress in a dangerous state.

According to Dr. Gary Schaffer, a wetlands scientist and cypress expert at Southeastern University, "of roughly 200,000 acres of cypress swamp forest in the Maurepas and Pontchartrain basins, 80 percent is 'highly unlikely to regenerate,'" if cut down. *Landowners, loggers, environmentalists and politicians wrestle over the declining health of south Louisiana's cypress forests*, GAMBIT WEEKLY, June 21, 2005, available at http://www.bestofneworleans.com/dispatch/2005-06-21/cover_story.php. A scientific panel reporting to Governor Kathleen Blanco in 2005 estimated that 70-80% of Louisiana's cypress forests could not regenerate if logged, even if they were replanted with cypress trees. Governor's Report at 121.

A recent article from The Times Picayune illuminates the desperate state of the Lake Pontchartrain Basin wetlands in St. Charles Parish. The article notes that the wetlands are "laced with heavy metals and toxic chemicals," a legacy of an oil refinery that was in operation until 2000. *Motiva to spend \$10 million to clean up polluted bayou*, TIMES PICAYUNE, Feb. 15, 2008, available at <http://www.nola.com/news/t-p/metro/index.ssf?/base/news-27/1203057095316740.xml&coll=1>. Shell Oil has just agreed to a \$10 million settlement to clean up the devastation that their facility left behind in an area near Valero's proposed expansion site. *Id.*

Despite the cypress wetlands' undisputed value, Valero is asking LDEQ to bless its plan to fill in over 67 acres of cypress forest wetlands—in arguably the most valuable and endangered area of the Lake Pontchartrain Basin—in order to build an overflow parking lot, store equipment, and expand its facility. LDEQ, as public trustee, has a constitutional mandate to protect, conserve and replenish "[t]he natural resources of the state, including...water... insofar as possible and consistent with the health, safety, and welfare of the people." La. Const. Art. IX § 1. LDEQ must not grant Valero's request for

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water quality certification and protect cypress forested wetlands that serve as valuable natural protection from flooding, storm protection, water quality improvement, and a natural habitat for a wide variety of wildlife.

I. UNDER FEDERAL AND STATE LAW, LDEQ MUST ANALYZE THE ENVIRONMENTAL IMPACTS OF VALERO'S PROJECT BEFORE ACTING ON THE WATER QUALITY CERTIFICATION.

A. The Clean Water Act Requires LDEQ to Independently Certify Compliance with Water Quality Standards.

Under the Clean Water Act, if individuals or companies such as Valero want to discharge pollutants, or in this case fill wetlands for a parking lot, equipment storage, and facility expansion, they must first apply for a federal permit. 33 U.S.C. §§ 1342, 1344. Applicants for a federal permit must obtain certification from the state in which the activity will take place that the activity complies with state effluent limitations and water quality standards. 33 U.S.C. §1341(a)(1) (“No license or permit shall be granted until the certification required by this section has been obtained... no license or permit shall be granted if certification has been denied by the state.”).

In Louisiana, LDEQ has the authority to issue water quality certifications. *See* La. Rev. Stat. § 30:2074. The certification focuses on the impact the activity will have on wetlands or on the water quality of the affected waters. *See* La. Admin. Code tit. 33 §1507. Specifically, LDEQ must review applications for water quality certification “in terms of compliance with State Water Quality Standards, the Water Quality Management Plan for the water body affected by the activity, and applicable state water law, rules and regulations.” La. Admin. Code tit. 33 § 1507.C.3. In addition to numerical limits on pollutants, Louisiana’s water quality regulations provide additional direction for protecting water quality and water use. LDEQ must protect Louisiana’s waters “for recreational uses and for the preservation and propagation of desirable species of aquatic biota and indigenous species of wildlife.” La. Admin. Code tit. 33 § 1109.B.1. Further, the state’s antidegradation policy requires that no activity adversely impact “designated uses.” La. Admin. Code tit. 33 § 1119.C.

The fact that a federal agency, the Army Corps of Engineers, must also consider Valero’s permit application under § 404 of the Clean Water Act, does not relieve LDEQ of its independent duty, as public trustee, to examine the environmental impacts of Valero’s proposed project when reviewing its request for water quality certification. The certification process grants the state independent authority to ensure the integrity of its water quality and to protect its wetlands. *See Keating v. Fed. Energy Regulatory Comm’n.*, 927 F.2d 616, 622 (D.C. Cir. 1991) (“Through this requirement, Congress intended that the states would retain the power to block, for environmental reasons, local water projects that might otherwise win federal approval.”).

Louisiana courts have recognized that LDEQ bears the burden of ensuring that a proposed action will not violate state water quality laws and regulations. The First

Circuit Court of Appeal has explained: “To grant a water quality certification, the DEQ must verify that the proposed activity complies with applicable water quality standards.” *In re West Pearl River Navigation Project*, 94-2660 (La. App. 1 Cir. 6/23/95), 57 So. 2d 640, 642.

The Lake Pontchartrain Basin and its waterways almost all are statutorily classified as Primary Contact Recreation, Secondary Contact Recreation, Propagation of Fish and Wildlife, and Oyster Propagation surface waters. *See* La. Admin. Code tit. 33 § 1123.C. At a minimum, LDEQ must ensure that Valero's wetland filling proposal will not degrade the water quality standards in place for those water bodies. Therefore, LDEQ must first identify the applicable water quality standards and then show, in detail, how the project will impact those standards. Only if LDEQ can produce sufficient evidence proving that the project will not degrade water quality may LDEQ grant Valero a water quality certification.

B. LDEQ MUST COMPLY WITH ITS CONSTITUTIONAL MANDATE TO SERVE AS PUBLIC TRUSTEE OF THE ENVIRONMENT WHEN ISSUING WATER QUALITY CERTIFICATIONS.

LDEQ has a constitutional mandate to protect, conserve and replenish “[t]he natural resources of the state, including...water... insofar as possible and consistent with the health, safety, and welfare of the people.” La. Const. Art. IX § 1. In *Save Ourselves Inc. v. La. Env'tl. Control Comm'n*, 452 So.2d 1152, 1157 (La. 1984), the Louisiana Supreme Court stated that LDEQ, as the representative of the public interest, may not “act as an umpire passively calling balls and strikes for adversaries appearing before it; the rights of the public must receive active and affirmative protection at the hands of the [agency].” As the “primary public trustee of natural resources and the environment,” LDEQ “must act with diligence, fairness and faithfulness to protect” public interest in Louisiana’s natural resources. *Id.*

i. The Louisiana Constitution Requires LDEQ to Analyze the Environmental Impacts of Valero’s Proposed Project.

The Louisiana Constitution requires LDEQ, as public trustee, to analyze the environmental impacts of Valero’s proposed project before deciding whether to grant Valero's water quality certification request. Article IX, Section 1 of Louisiana’s Constitution states that:

The natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people. The legislature shall enact laws to implement this policy.

Louisiana courts explained this constitutional requirement in the *Save Ourselves*

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decision and *In re Rubicon, Inc.*, 95-0108 (La. App. 1 Cir. 2/14/96), 570 So. 2d 475, 481. In *Save Ourselves*, the Louisiana Supreme Court outlined LDEQ's public trustee responsibilities under the Louisiana Constitution. The Supreme Court found that Article IX, Section 1 is a "rule of reasonableness which requires an agency or official, before granting approval of [the] proposed action affecting the environment, to determine that adverse environmental impacts have been minimized or avoided as much as possible consistently with the public welfare." *Save Ourselves* at 452 So. 2d 1157. The court expounded that the examination "requires a balancing process in which environmental costs and benefits must be given full and careful consideration, along with economic, social and other factors." *Id.*

The court in *Rubicon* further elucidated LDEQ's public trustee responsibilities by setting out a series of specific inquiries that the public trustee must address in order to satisfy the Constitutional mandate. 670 So. 2d 475. Specifically, LDEQ must address:

Whether: 1) the potential and real adverse environmental effects of the proposed project have been avoided to the maximum extent possible; 2) a cost/benefit analysis of the environmental impact costs balanced against the social and economic benefits of the project demonstrate that the latter outweighs the former; and 3) there are alternative projects which would offer more protection to the environment than the proposed project without unduly curtailing non-environmental benefits to the extent applicable.

Id. at 483.

These questions are known as the "IT Questions," and under the *Save Ourselves* and *Rubicon* decisions, LDEQ must answer them in an "IT Analysis" before making any decision as to water quality certification for Valero's proposed wetland filling project.

LDEQ must therefore meet certain basic substantive and informational requirements before granting water quality certification. These include accurately assessing the real and potential environmental harms of the project, examining alternatives to the proposed action, and performing a cost/benefit analysis. LDEQ is therefore also obligated to ensure compliance not only with its own water quality regulations, but also with other state water laws and Louisiana's constitutional and statutory framework governing environmental decision-making.

LDEQ has conducted no IT Analysis with respect to Valero's project, much less one that adequately considers the potential and real adverse environmental effects of depositing 381,600 cubic yards of fill material in 67.59 acres of cypress forested wetlands in the Lake Pontchartrain Basin. Further, LDEQ has not conducted an adequate discussion of the costs and benefits of the proposed project, nor has it discussed alternative projects, alternative sites or mitigating measures. Before LDEQ can make any decision regarding Valero's request for water quality certification, LDEQ must answer the IT Questions in order to fulfill its public trustee duties. *See, e.g., Judgment, O'Reilly et al. v. LDEQ*, No. 509564 (La. 19th JDC, Mar. 5, 2004) (vacating and remanding an

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LDEQ water quality certification “to prepare an environmental analysis in compliance with the La. Const. Art. IX § 1, as explained by *Save Ourselves, Inc. v. La. Env'tl. Control Comm'n*, 452 So. 2d 1152 (La. 1984) and its progeny.”)

C. LDEQ Must Support its IT Analysis with Evidence.

Once LDEQ conducts an IT Analysis, it must support its decision regarding Valero’s water quality certification request with evidence in the administrative record. The Louisiana Supreme Court explained that:

for the purposes of judicial review, and in order to assure that the agency has acted reasonably in accordance with law, in a contested case involving complex issues, the agency is required to make basic findings supported by evidence and ultimate findings which flow rationally from the basic findings; and it must articulate a rational connection between the facts found and the order issued. This is particularly so in a case such as this where the agency performs as a public trustee and is duty bound to demonstrate that it has properly exercised the discretion vested in it by the constitution and the statute.

Save Ourselves, 452 So. 2d at 1159-60 (internal citations omitted).

Louisiana courts have reversed LDEQ water quality certifications because the record lacked sufficient evidence to support the LDEQ’s conclusions. *See In re West Pearl River Navigation Project*, 94-2660 (La. App. 1 Cir. 6/23/95), 657 So. 2d 640. There, the court stated that in order “[t]o grant a water quality certification the DEQ must verify that the proposed dredging activity complies with the water quality standards set forth in LAC 33:IX.1113(B)(5).” *Id.* at 642. The court then reversed LDEQ’s certification “because there was an inadequate amount of data... [and] insufficient evidence in the record to conclude that... [the activity posed]... no environmental problems or threats to water quality.” *Id.* The court concluded that “[w]ithout this evidence, the DEQ could not verify that the water quality standards... were met.” *Id.*

Clearly, LDEQ must support its conclusions regarding Valero’s request for water quality certification with data and evidence that the proposed project will comply with statutory water quality standards. Otherwise, any certification of the project will be reversed by a state court for lack of sufficient supporting evidence.

D. A Competent Water Quality Certification Requires Appropriate Water Quality Modeling To Confirm Protection of Water Quality.

Because LDEQ must support its certification with evidence, LDEQ must rely on scientific techniques for predicting the effects of industrial activity on water quality, which include water quality monitoring. *C.f. Deep River Citizens’ Coal. v. N.C. Dep’t of Env’t and Nat. Res.*, 598 S.E.2d 565, 569 (N.C. 2004) (upholding a water quality certification where the agency used computer models to predict the effects a proposed

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project had on water quality). In this case, LDEQ's administrative record is devoid of any testing, sampling, modeling, or other evidence that this project will meet water quality standards.

II. LDEQ MUST EVALUATE THE PROPOSED PROJECT TO ENSURE CONSISTENCY WITH LOUISIANA'S COMPREHENSIVE MASTER PLAN FOR A SUSTAINABLE COAST.

Valero's proposed project to fill in 67.59 acres of cypress forested wetlands with over 381,000 cubic yards of fill is inconsistent with the Louisiana's Comprehensive Master Plan for a Sustainable Coast ("Master Plan"). *See* Louisiana's Comprehensive Master Plan for a Sustainable Coast (2007), [http://www.lacpra.org/assets/docs/Comprehensive%20Master%20Plan%20\(Main%20Report\)%20-%20chapter%203.pdf](http://www.lacpra.org/assets/docs/Comprehensive%20Master%20Plan%20(Main%20Report)%20-%20chapter%203.pdf).

The Master Plan emphasizes the importance of the wetlands as a fundamental part of the hurricane protection system and states that wetland areas within the hurricane protection system "need to remain intact and undeveloped." *Id.* at 68. The Master Plan also states that development in wetlands or areas near the levee footprint "would not only be risky from a safety and economic standpoint, but it would also degrade wetlands and eliminate interior flood storage capacity." *Id.* Valero's site rests squarely within the hurricane protection system in St. Charles Parish. *See Id.* at 75. *See also* US Army Corps of Engineers Hurricane Protection System East Jefferson & St. Charles Projects *available at* http://www.mvn.usace.army.mil/hps/Jeff_StChar_Proj.htm. The Master Plan also states that "overall hydrology must be improved by minimizing impediments to water flow." Master Plan at 68. Allowing Valero to fill in 67.59 acres of endangered cypress forested wetlands with 381,600 cubic yards of fill is obviously inconsistent with the mandate to improve hydrology and minimize impediments to water flow. Valero's proposal to fill in 67.59 acres of endangered wetlands in a hurricane protection system is contradictory to the unequivocal language of the Master Plan.

The Louisiana Legislature unanimously approved the Master Plan during the 2007 Regular Session. SCR No. 11, 2007 Leg., Reg. Sess. (La. 2007). On January 23, 2008, Louisiana Governor Bobby Jindal gave even greater weight to the recommendations laid out in the Master Plan by issuing Executive Order No. BJ 2008-7 ("Executive Order"). This Executive Order requires that all state agencies "administer their regulatory practices, programs, contracts, grants, and all other functions vested in them in a manner consistent with the Master Plan and public interest to the maximum extent possible." Exec. Order No. BJ 2008-7 *available at* <http://www.gov.state.la.us/assets/docs/OfficialDocuments/2008EO7SustainableCoast.pdf>. The Executive Order, in addition to ordering all state agencies to comply with the Master Plan, asserts that "state agencies must function in a manner that recognizes the vital importance of expediting hurricane and coastal protection and ensuring sustainable practices in our coastal zone." *Id.*

While the Executive Order seeks to implement the Master Plan's goal to preserve wetland areas, Valero plans to destroy endangered wetlands within the hurricane protection system and leave an overflow parking lot, equipment storage facility, and facility expansion in its place. LDEQ cannot both follow the Executive Order and issue a

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water quality certification to Valero for its plan to destroy almost 70 acres of cypress forested wetlands in the hurricane protection system to build an overflow parking lot, an equipment storage facility, and facility expansion.

The cypress forested wetlands in the Lake Pontchartrain Basin are located within a hurricane protection system and fall within the protections that were anticipated in the Master Plan. In adopting the Master Plan, the Louisiana legislature recognized the vital importance of these wetlands areas and that their further degradation must not continue. Governor Bobby Jindal, in issuing his Executive Order, has also recognized this and has required all agencies to comply with the findings of the Master Plan. LDEQ cannot issue a water quality certification to Valero without contradicting both the Master Plan and Governor Jindal's Executive Order.

III. LDEQ AND VALERO MUST COMPLY WITH LA. ADMIN. CODE TIT. 33 § 1507(D) PUBLIC NOTICE REQUIREMENTS REGARDING VALERO'S APPLICATION.

La. Admin. Code tit. 33 § 1507(D) requires that LDEQ send Valero a public notice “[w]ithin 10 days after the review process is completed by the administrative authority.” Valero must then “publish the public notice one time in the official journal of the state and one time in at least one or more... local newspapers or journals of general circulation in each parish where the activity is to be conducted.” La. Admin. Code tit. 33 §1507(D). The public notice must contain, among other things, the “date of and final action proposed by the administrative authority” and a “statement that comments will be received for 10 days following publication.” La. Admin. Code tit. 33 § 1507(D)(1)(c)(iv), (vi). LDEQ must send a copy of the public notice to “any person who requests a copy of the public notice for the particular action.” La. Admin. Code tit. 33 §1507(D)(2). Further, La. Admin. Code tit. 33 §1507(E)(1)(b) permits any person to request a public hearing to consider “material matters at issue in a certification application.”

On January 18, 2008, LDEQ and the Army Corps of Engineers issued a joint public notice stating that the public had 30 days to comment on Valero's application for a 404 permit and an accompanying application for water quality certification. However, at the time the agencies issued the January 18 notice, neither LDEQ nor the public had adequate information to review the application. Specifically, the public notice contained no information that would enable LDEQ to fulfill its duties as public trustee to conduct a proper IT Analysis. Because LDEQ did not have enough information to analyze the environmental impacts of Valero's project, LDEQ could not have issued the notice “[w]ithin 10 days after” LDEQ completed its review process. *See* La. Admin. Code tit. 33 §1507(D). The joint public notice issued on January 18, 2008 therefore cannot serve as public notice required for this project under La. Admin. Code tit. 33 §1507(D).

The Lake Pontchartrain Basin Foundation, GRN, and LEAN request that LDEQ notify them when LDEQ issues proper public notice to Valero under La. Admin. Code §1507(D) so that they may comment on the project after LDEQ conducts the required IT

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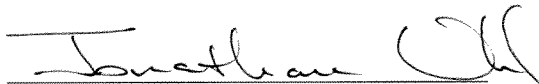
Analysis. Furthermore, the Lake Pontchartrain Basin Foundation, GRN, and LEAN request that LDEQ hold a public hearing to consider the environmental impacts of the proposed project. *See* La. Admin. Code tit. 33 §1507(E)(1)(b).

CONCLUSION

For the foregoing reasons, LDEQ cannot grant Valero a water quality certification without first examining the environmental impact of Valero's proposed project. To adequately examine these impacts, LDEQ must: 1) identify the applicable water quality standards; 2) provide evidence showing that the proposed project will not violate those standards; 3) conduct a full IT Analysis; 4) add the IT Analysis to the administrative record; and 5) provide public notice and a ten-day comment period so that the public can review and comments on the IT Analysis. For these reasons LDEQ cannot grant Valero's water quality certification request based on the current administrative record.

Prepared by:

Respectfully submitted by:



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